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SITUATION OF HUMAN RIGHTS IN BOSNIA AND HERZEGOVINA, THE REPUBLIC OF CROATIA AND THE FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA AND MONTENEGRO)

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the periodic report submitted by Mr. Jiri Dienstbier, Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Croatia and Bosnia and Herzegovina, in accordance with General Assembly resolution 53/163 of 9 December 1998 and Economic and Social Council decision 1999/232 of 27 July 1999. Pursuant to the requests of the Commission on Human Rights and the Council, the report will also be made available to the members of the Security Council and the Organization for Security and Cooperation in Europe.

PERIODIC REPORT ON THE SITUATION OF HUMAN RIGHTS IN THE FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA AND MONTENEGRO), THE REPUBLIC OF CROATIA AND BOSNIA AND HERZEGOVINA, SUBMITTED BY THE SPECIAL RAPPORTEUR OF THE COMMISSION ON HUMAN RIGHTS

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I. INTRODUCTION

1. This is the third comprehensive report on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) submitted by the Special Rapporteur of the Commission on Human Rights, Mr. Jiri Dienstbier. The last report of the Special Rapporteur was completed in December 1998 and submitted to the fifty-fifth session of the Commission on Human Rights (E/CN.4/1999/42). The present report considers human rights developments in the countries of the Special Rapporteur's mandate through mid-August 1999. The Special Rapporteur once again notes with regret the United Nations practice of requiring early submission of reports for the purposes of editing and translation, resulting in the official dissemination of outdated reports.

2. The Special Rapporteur would like to extend his appreciation to the Office of the United Nations High Commissioner for Human Rights, and especially to the field officers of the Office of the High Commissioner in the countries of his mandate, for the support which they have provided to him, often under very difficult circumstances.

II. GENERAL OBSERVATIONS

3. The Special Rapporteur believes that it continues to be essential to consider the situations in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) from a regional perspective. The Kosovo crisis which erupted in 1999 is another problem which is best viewed in the overall context of the violent disintegration of the former Yugoslavia. Major issues such as the question of refugees and internally displaced persons are most effectively addressed on the level of all three countries of the Special Rapporteur's mandate, and the same applies to other issues including the development of civil society and democratic structures, good governance, and the problems of trafficking in human beings and other international criminal activities.

4. Indeed, if the international community wishes to succeed it must pursue a comprehensive political, economic and humanitarian strategy for all of south-eastern Europe. The current international presence in Kosovo cannot be merely a "holding operation" but must be linked to a peace strategy for the entire Balkan region. To this end the Special Rapporteur welcomes the newly-created Stability Pact of the European Union for south-eastern Europe, which outlines a comprehensive approach to the region and promises the States of south-eastern Europe international assistance and eventual integration into European political and economic structures in return for ongoing progress towards democracy, respect for human rights, and regional cooperation. He believes that it is important that civil society actors are given an active role in the implementation of the Stability Pact, especially with respect to democratization and human rights. The wide support for including opposition parties and civil society and making women's issues a priority concern is encouraging. However, some deficiencies may already be seen in the Stability Pact's implementation, such as the tendency to isolate Serbia, which is the geographical and economic

centre of the region. The Special Rapporteur believes that embargoes and similar policies of the international community can only help to strengthen anti-democratic regimes in the region, and are themselves a major violation of human rights.

III. BOSNIA AND HERZEGOVINA

5. The Special Rapporteur visited Bosnia and Herzegovina from 15 to 20 May 1999 and travelled mainly in the Republika Srpska entity, where he stopped in Banja Luka, Brcko, Bijeljina and other towns in order to assess the impact of the Kosovo crisis on human rights. He met with local authorities, civil society representatives and officials of human rights institutions, as well as representatives of international organizations, in order to get a full picture of the human rights situation. He also briefly visited Bosnia and Herzegovina in April 1999 and discussed the impact of the Kosovo crisis with representatives of civil society and international organizations in Sarajevo.

A. Political context

6. The last year has been dominated by events in the Republika Srpska which followed the dismissal of the entity's President, Nikola Poplasen, by the High Representative and the announcement of the Brcko Arbitration Award on 5 March 1999. The response of the Republika Srpska National Assembly to these decisions was to call for the withdrawal of Republika Srpska representatives from joint government institutions. Some violence and demonstrations followed, mainly targeting representatives of the international community. The military operation of the North Atlantic Treaty Organization (NATO) against the Federal Republic of Yugoslavia, which commenced on 24 March, increased tensions in Bosnia and Herzegovina and caused serious damage to the economic and social situations, particularly in the Republika Srpska, as some 75 per cent of Republika Srpska exports had been to the Federal Republic of Yugoslavia. The influx of persons seeking protection in Bosnia and Herzegovina at its peak reached some 100,000 persons including Kosovo Albanians, Muslims from Sandzak and Montenegro, and Serbs and Croatian Serbs from Serbia and Kosovo. Some concerns were expressed that the arrival of refugees would slow down the return process in Bosnia and Herzegovina itself. Owing to security concerns, minority returns, in particular to the Republika Srpska, had already been decreasing in any event. Overall, however, the situation in the country remained relatively calm through this difficult period and has somewhat improved since the end of the NATO operation.

7. In the entity of the Federation of Bosnia and Herzegovina, institutions have functioned only with great difficulty. There is clearly a lack of political will to make these institutions work, and parallel institutions continue to exist and pose problems. On 16 March 1999, a car bomb exploded in the centre of Sarajevo, fatally injuring the (Bosnian Croat) Federation Deputy Minister of the Interior, Jozo Leutar. Bosnian Croats reacted with a boycott of Federation institutions, and the assassination fuelled demands for the formation of a third entity in the country to protect the rights of Bosnian Croats. The perpetrators of the killing have not been found.

B. Civil and political rights

1. General situation

8. In considering major areas of human rights concerns in Bosnia and Herzegovina, the Special Rapporteur wishes to recall that most, if not all, forms of rights violations continue to have a basis in some form of discrimination based on ethnicity, political affiliation, gender, age, disability, or a combination of these. This is particularly evident in the fields of employment rights, education, property, access to health care and pensions, and provision for the disabled. Insufficient action has been taken to ensure compliance with international human rights standards. The effect of discrimination has been to ensure continued control by the dominant groups in different parts of the country, which militates against progress towards a truly multi-ethnic, democratic State which respects and protects the human rights of all its citizens.

9. The role of the police, as agents of the State, in ensuring the effective protection and promotion of human rights is crucial. While the progress made in some areas is commendable, there are still major problems. Despite the efforts of the International Police Task Force (IPTF) component of the United Nations Mission in Bosnia and Herzegovina (UNMIBH), which is mandated to assist in the creation of professional, multi-ethnic police forces in both entities, the police remain mono-ethnic in most areas and general effectiveness in crime detection remains low, leading to impunity. Police remain reluctant to implement court decisions which do not accord with the politics of the majority group. Police reform in both entities further suffers from a lack of political will and the number of minority police officers and women officers of all ethnic backgrounds is alarmingly low. Training in all areas of police work, particularly in human rights, is still an absolute necessity.

10. The lack of a functioning and independent judiciary remains a major concern. The judiciary is in transition, but the legacies of the former communist system, the war and the effects of the ethnic divisions in the country are hard to overcome. Interference from political power structures in the judicial system is still strong.

11. Minority returns have continued across the country, but the numbers remain insignificant when compared with the number of people displaced as a result of the conflict. Due to improved freedom of movement, however, the number of people visiting their former homes has continued to increase. Another trend has been the return of Serbs to some locations in the Federation, as a result of the deteriorating living conditions in the Republika Srpska.

12. For returnees, security, employment opportunities, housing, pensions, health care, education, water and electricity are of paramount importance. Even the most basic services for returnees often are not provided. Discriminatory practices in education and the lack of even primary health care impact in particular on households headed by women. In rural areas in particular, most returnees are elderly people. The authorities at all levels have failed to create conditions conducive to sustainable returns. Property legislation is now

in place in both entities, but implementation remains poor and is still subject to political pressures.

13. The way in which the constitutional order created following the Dayton Agreement now operates prevents the State from exercising executive authority so as to harmonize structures and ensure adherence to human rights standards. The State of Bosnia and Herzegovina remains weak. While joint institutions exist at the State level, they still do not work effectively. The entities, which according to the Constitution have most of the jurisdiction relevant to the protection of human rights, e.g. law enforcement and the judiciary, are also divided either ethnically or politically and thus do not function effectively. The devolution of power to the entities, and in the entity of the Federation to the cantons, in specific areas of law and administration results in different legal systems and procedures being controlled at the local level. This has the effect of giving considerable power to the nationalist ruling parties which control specific regions, which in turn leads to discrimination. The international community, under the leadership of the Office of the High Representative, has increasingly assumed the role of the State. Most progress has been achieved by decisions imposed by the High Representative, but implementation of the decisions remains poor and will require continued monitoring.

2. Rule of law and the administration of justice

Police restructuring

14. The political will to create a multi-ethnic police continues to be lacking. Progress in police restructuring, which is the main task of the IPTF, has been slow in both entities. In the Federation, there has been a failure in all 10 cantons to achieve the goals set by the Bonn-St. Petersburg Agreement of 1996, which calls for an ethnic balance based on the 1991 census. While some limited progress in hiring Croat police officers in Bosniak-dominated cantons and Bosniaks in Croat-dominated cantons has been achieved, the hiring of Serbs and others falls significantly under the target of 1,500 officers. In the Republika Srpska, there has been very little progress in hiring minority (non-Serb) police officers. In total there are only 147 sworn non-Serb officers out of a total force of 8,500.

15. The Federation Police Academy was inaugurated in April and the official inauguration of the Republika Srpska Police Academy took place in July 1999. Even though a good proportion of the students in both academies come from minority ethnic groups, neither academy has the capacity to train the number of police needed to make the police forces truly multi-ethnic.

16. The number of women in the police forces of both entities is alarmingly low: only some 200 female police officers out of more than 11,000 in the Federation and approximately 30 out of 8,500 in the Republika Srpska. This has serious implications for the proper investigation of gender-based violence, such as domestic violence and rape. The problem is compounded by the fact that the police are in general not trained to respond adequately and in a gender-sensitive manner to gender-specific crimes.

Security of returnees

17. A professional and multi-ethnic police force is vital for creating secure conditions for returnees. A lack of adequate police response to violence targeting minority returnees has continued throughout the year and remains an obstacle to returns in many areas of the country. In Stolac (Bosnian Croat-administered), more than 70 incidents of returnee-related violence reported in 1998 led UNMIBH to carry out an extensive review of the Stolac police in December 1998. Each member of the local police administration was placed on three months' probation from February 1999 and was closely monitored. The conclusion of UNMIBH was that there is no functional police force in Stolac and despite some positive steps taken during the probation period, major problems persist. The police in Stolac and elsewhere in canton 7 remain far from professional and effective. Attacks on minority returnees have taken place throughout the country in 1999, often resulting from "spontaneous" protests organized by local, majority populations, many of whom are themselves displaced persons.

18. In May 1999, a serious obstruction to minority return took place in Kotor Varos (Republika Srpska), when some 30 Bosniak families were blocked from returning to the village of Vecici. On 20 May, the Kotor Varos Municipal Assembly had unanimously passed a resolution opposing the return of Bosniaks to the municipality. The following day, an organized group of Serbs blocked the road and prohibited the displaced persons from returning. The response of the local police was inadequate.

19. Returns also continue to be problematic in the municipality of Drvar (Federation, Bosnian Croat-administered), where some 4,000 persons, mainly Serbs, have returned. In July, allegations that a Serb man had sexually assaulted a Croat woman led to "spontaneous" protests by the Croat population and demands for an end to returns to the area. A series of attacks against Serb returnees followed. Responding to the danger of a potentially deteriorating security environment, the international Stabilization Force (SFOR) increased its presence in the area. The local police have continuously failed to take any action to protect returnees in Drvar.

Right to physical integrity

20. Allegations of police brutality and abuse continue to be reported to IPTF. A particularly egregious case of police brutality was reported by UNMIBH in January 1999, in connection with the investigation into the murder in August 1998 of Srdan Knezevic, when it was revealed that Republika Srpska police officers had held 14 suspects and witnesses in illegal detention and subjected them to torture and ill-treatment for periods of up to 10 days. Several suspects were coerced into making confessions and incriminating statements which were then used as evidence to support indictments. The trial of the individuals charged with the murder ended with not-guilty verdicts for all six defendants. As requested by UNMIBH, Republika Srpska authorities conducted an investigation into the allegations of torture and other improprieties by Republika Srpska police officers in this case. Several police officers involved in the case were removed from their positions and decertified by IPTF.

Policing in the context of forced prostitution and trafficking

21. There were a number of raids during summer 1999 by local police in both entities targeting cafe bars and nightclubs suspected of being sites of prostitution activities. As a result, many women, the majority of them non-Bosnian nationals, were detained and prosecuted. For example, in Central Bosnia canton (Federation), two separate raids were conducted in July 1999 in which more than 30 women (including one minor) were detained, some of whom were prosecuted and sentenced to imprisonment. Some were subsequently deported from the canton. Running a brothel is illegal under Bosnian law and the police are thus entitled to inspect and investigate suspected premises.

22. Major human rights concerns with regard to the response of the police and the judiciary to these cases include the fact that the main focus of local police would appear to be on the ostensible offences committed by the women and not on other criminal offences, including those committed against the women; women have been arrested on scant or no evidence of any illegal activity, and there have been a number of serious procedural errors (including lack of interpreters) which have resulted in women being fined or imprisoned without a fair hearing. Additionally, deportation from the territory of cantons, which under cantonal legislation is mandatory, raises serious concerns for the safety of the women deported, as well as with respect to the legality of the decisions. The women, some of whom have been trafficked to Bosnia and Herzegovina, have in many cases been the victims of crimes, such as illegal detention in slavery-like conditions, forced prostitution and assault, including sexual assault and rape.

The judiciary and the right to a fair trial

23. A major issue in Bosnia and Herzegovina is the need for some type of "quality control" of judicial officials. Judges and prosecutors, unlike police, were never subjected to a recertification process after the war. Many qualified professionals left the country during the war, and the appointment procedures for new judicial officials have often been motivated by political considerations. Substantial numbers of judicial personnel are either incompetent or inadequately trained, and corruption and political influence taint the judicial system. Additionally, there is a lack of judges and other personnel, partly because of low salaries or non-payment and delays in paying salaries. The infrastructure of the judicial system remains inadequate.

24. Concerns about the judiciary were highlighted in a recent decision of the Human Rights Chamber on judicial appointment procedures, access to the courts and discrimination against minorities. The decision, DM v. Federation of BiH, involved a Bosniak applicant who in 1993 was evicted from her property in Croat-administered Livno by a Croat police officer. Since her return to Livno in 1997 she had unsuccessfully tried to obtain a court decision awarding her repossession of her property. The Chamber found that the judicial appointment process in canton 10, where only members or supporters of the ruling Croat nationalist party have been appointed, prevented minorities from filing claims with the courts. The Chamber ordered the Federation to take immediate steps to reinstate the applicant into her house, and to pay damages. The decision also addressed fair trial issues. The Chamber confirmed a pattern of discrimination

against Bosniaks and found that the applicant's rights to a fair hearing and an effective remedy before the courts had been violated.

25. Another violation of the right to fair trial has been the ongoing proceedings against the so-called Zvornik 7 in the Republika Srpska. On 12 December 1998, the Bijeljina (Republika Srpska) District Court sentenced three Bosniaks to lengthy prison terms for the murders of four Serb woodcutters in the beginning of May 1996. Following an appeal, the Republika Srpska Supreme Court abolished the verdict and ordered a retrial, based on irregularities in the reasoning of the first instance court. International observers expressed disappointment with the Court's reasoning, as evidence of the use of coerced confessions and the denial of the right to effective assistance of counsel, among other violations of due process, were not mentioned in the decision.

War crimes trials

26. The main problem in war crimes prosecutions remains that virtually all proceedings are conducted against accused persons who have a different ethnic background from that of the prosecuting authorities. On the positive side, there has largely been compliance with certain procedural guarantees and international observers have been satisfied with the fairness of most proceedings.

27. In the Federation several war crimes proceedings were under way in 1999. In January, Milomir Tepes was convicted and sentenced to 13 years' imprisonment by the Sarajevo Cantonal Court for war crimes against the civilian population. Tepes' file had been sent to the International Tribunal for the Former Yugoslavia (ICTY) in accordance with the so-called rules of the road agreement brokered in 1996 by countries of the Contact Group, and the ICTY had found there was sufficient evidence for his detention. No major procedural violations were noted by trial monitors. War crime suspect Miodrag Andric was acquitted by the Sarajevo Cantonal Court on 17 March due to insufficient evidence, in a case which was viewed by international observers as a promising instance of inter-entity judicial cooperation. Though the retrial took place in the Sarajevo Cantonal Court (Federation), the Court agreed to carry out some proceedings in the Republika Srpska.

Human Rights Chamber

28. There was an increase in applications to the Human Rights Chamber in 1999, which was indicative of the failure of other courts in the country to provide effective remedies. A number of important decisions were taken during the year by the Chamber, but even though the decisions of the Chamber are final and binding, the responsible authorities usually fail to comply. The Republika Srpska in particular has not met its obligations in this regard. The Federation has been slowly moving towards compliance with some decisions of the Chamber, albeit in many cases under great pressure from the international community.

C. Economic, social and cultural rights

1. Right to property

29. Property laws in both entities have been amended, in most cases by decisions taken by the High Representative, and a legal framework for the protection of property rights is in place. A major barrier to the implementation of the laws is the non-execution of eviction orders against temporary occupants of property belonging to someone else. There have also been widespread reports of the misuse of municipal powers to issue decisions on use of socially owned land. Municipalities in both entities have used their powers to inhibit minority returns by depriving returning minorities of agricultural land required for subsistence farming, or by appropriating key cultural or religious sites. To address this obstacle to return, in May 1999 the High Representative issued a decision to suspend the powers of municipal authorities in both entities to reallocate or dispose of socially owned property.

2. Employment rights

30. Reports of discrimination on different grounds have been increasing and are of serious concern. The Federation Ombudsmen, in their report on the human rights situation in the Federation of Bosnia and Herzegovina for 1998 (issued in May 1999), based on their work in monitoring progress on the rights enumerated in the International Covenant on Economic, Social and Cultural Rights, concluded that the Federation Government at different levels had taken no steps to adopt necessary laws on labour and social rights or on social security. The international community generally has increasingly paid attention to this issue. In June 1999 the mission in Bosnia and Herzegovina of the Organization for Security and Cooperation in Europe (OSCE) issued a report on discrimination in employment which noted different types of discrimination, including cases arising during the war of dismissal of workers from "the other side", as well as more recent cases related to national background, political affiliation, gender, and trade union or labour rights activity.

31. The country's legal framework is complicated and not conducive to the elimination of such discrimination. At the State level, there is no labour law. In the Federation, in July, after more than two years of heated debate the House of Peoples finally approved the Federation Labour Law, containing a comprehensive anti-discrimination provision which provides that "a person seeking employment, as well as an employed person, shall not be discriminated against on the basis of race, colour, sex, language, religion, political or other opinion, national or social affiliation, financial situation, birth or any other circumstances, membership or non-membership in a trade union, or physical or mental disability". Before entering into force, the law must still be passed by the Federation House of Representatives. In the Republika Srpska, a labour law has been in place since 1993 and has been amended four times, but does not directly address discrimination in employment.

32. In July 1999, the Human Rights Chamber set a precedent by issuing its first decision regarding discrimination in employment, Zahirovic v. BiH and FbiH. The Chamber stressed that "the prohibition of discrimination is a central objective"

of the peace agreement, and ruled that maintaining the applicant on a waiting list after the end of the war, while hiring new employees, showed differential treatment inflicted on the applicant as compared to employees of other ethnic origins. It was also noted that the Chamber "cannot accept as a valid ground for differential treatment that the composition of the workforce should reflect the ratio of the different ethnic groups within the population" of the community in question.

3. Pension rights

33. Pensioners experience major difficulties receiving and surviving on their pensions. According to an OSCE report issued in March 1999, there is no single aspect of the present pension system that is free of problems, from the level of discriminatory treatment of minorities in branch offices, to the inadequate legislation governing the system's development. Access to documents remains problematic, particularly across entity lines. Poor relations between the Federation and Republika Srpska fund administrators have resulted in decisions negatively affecting returnees, as it is feared that individuals will take advantage of this poor relationship to register illegally for two pensions.

4. Rights of the disabled

34. There has been considerable concern at the continued failure of authorities to adequately address the rights of those suffering from disabilities. The Coalition for Equal Opportunities for Disabled Persons, comprising 20 local associations and various international agencies, was formed in August 1999. Its aim is, inter alia, to raise awareness and to campaign for better accessibility to public areas, employment and training. While these issues affect all disabled persons, there is particular concern regarding the Law on Basic Protection of Civilian Victims of War and Their Families and the Protection of Children (Federation). The law provides mechanisms for the calculation of benefits for those disabled as a result of war, but there is concern that the calculations will reduce the budget so that persons otherwise disabled will suffer a significant reduction in support.

5. Freedom of religion

35. On 11 June, the Human Rights Chamber delivered its decision in the case of the Islamic Community in BiH v. Republika Srpska. At the heart of the case was a series of requests to Republika Srpska authorities to rebuild 7 of the 15 mosques destroyed in the war. To date, those requests have either been ignored or denied. In addition, Republika Srpska authorities had removed all traces of the Islamic community's property and in some cases paved over the relevant sites. The Chamber ruled that the Republika Srpska authorities had either actively engaged in or passively tolerated discrimination against the free exercise of religion by Muslims. The Chamber also found the refusal to allow reconstruction of the mosques to be a violation of property rights. The Chamber ordered the Republika Srpska to refrain from the construction of buildings or objects on the sites of the destroyed mosques and to grant the necessary permits

for reconstruction of 7 of the 15 mosques. At the time of writing, however, Republika Srpska authorities had failed to comply with the Chamber's orders.

6. Right to education

36. The education system reveals a number of problems, including lack of material resources, lack of access for disabled students and a shortage of women in senior education posts. The most serious and pervasive issue, however, concerns the effective division of the education system along ethnic lines. To address these problems, international representatives are supporting a number of initiatives, such as the removal from textbooks of materials offensive to one or more of the ethnic groups, coupled with efforts to ensure (a) that all textbooks meet European standards, within a modernized curriculum; (b) human rights education for teachers, through which, to date, over 1,500 teachers and teacher trainers have been trained; and (c) that materials are developed for integrated use in the classroom. However, authorities on all sides have obstructed this process.

7. Gender

37. While the economic situation for most citizens is grave, women face particular obstacles to realizing their economic rights, particularly in regard to employment and access to credit and in the face of discrimination and practices of privatization. This has severe consequences in many directions, but is also a primary cause of "trafficking". Stereotyped attitudes about women and their subordinate status, particularly in respect of economic opportunities, lead to a greater risk for women of being moved and forced into exploitative labour, including prostitution.

D. Conclusions and recommendations

38. The Special Rapporteur has to conclude that little has changed in Bosnia and Herzegovina since the submission of his last report to the General Assembly one year ago. Minimal progress has been achieved with regard to respect for fundamental human rights and freedoms and the development of a tolerant, multi-ethnic society. Indeed, the crisis in Kosovo and the NATO operations against the Federal Republic of Yugoslavia have resulted in a slowing of progress in many areas vital for the protection of human rights.

39. While improvement is needed in many areas, the Special Rapporteur would like to emphasize the need to continue reform of the police and the judicial system, as they are vital in ensuring effective protection of human rights. The authorities have to demonstrate a real political will to cooperate with international organizations in these tasks, and international organizations must recommit themselves to their work. It is particularly important that in addition to the ethnic balance required, gender balance is also achieved, especially in law enforcement agencies. Training in all areas of police work, particularly human rights training, is still an absolute necessity.

40. Discriminatory practices in the areas of economic and social rights, which impact severely on minority returns, must be stopped. Implementation of the decisions and recommendations of the Federation Ombudsmen and the Commission on Human Rights (the Ombudsperson and the Human Rights Chamber) dealing with discrimination must take place without further delay. A legal framework which forbids discrimination in employment must be put in place in both entities as well as at the State level. The Special Rapporteur would like to emphasize both to the authorities of Bosnia and Herzegovina as well as to the international community that economic and social rights should be given the same weight as civil and political rights.

41. The international community will continue to be decisive in Bosnia and Herzegovina as the State and the entities continue to function poorly. However, all efforts must be made to ensure State responsibility for the protection of human rights. The State has to fulfil its responsibility, and the Special Rapporteur strongly recommends that Bosnia and Herzegovina start complying with its reporting obligations to United Nations human rights treaty bodies.

42. International representatives present in the country must be better coordinated, as there is still too much overlap between the various organizations. The same applies for national and quasi-national human rights mechanisms. The system remains too complex and should be simplified and made more effective.

IV. REPUBLIC OF CROATIA

43. The Special Rapporteur conducted his third mission to the Republic of Croatia from 25 July to 4 August 1999. He began in Opatija, where he gave a lecture on the situation of human rights in the territory of the former Yugoslavia to law students at a summer school organized by the Office of the High Commissioner for Human Rights. The Special Rapporteur also visited Istria and Rijeka in western Croatia, Knin and Split in central and southern Croatia, and Zagreb. During his visit, he met with government officials, journalists, international representatives and members of NGOs.

A. Security of person

44. The question of security, including the conditions to which people are returning, remains a key concern of the Special Rapporteur. In Berak, in the Danube region (Eastern Slavonia), there has recently been a series of ethnically motivated incidents of violence, with increasingly serious cases of intimidation, threat and arson against minority ethnic Serbs. In early August 1999, an ethnic Serb was beaten to death in what some villagers described as a lynching. The police arrested one suspect but witnesses claim that the murder was committed by a mob. Berak and its adjoining villages have been at the centre of several politically motivated incidents since November 1998 which have undermined the process of reconciliation and trust in the Danube region. In May, the situation deteriorated when demonstrations by Croat returnees over the issue of missing persons led to assaults against local Serb residents. International monitors accuse the local Croat mayor of organizing a campaign of

intimidation in which pressure groups erect crosses and light candles in the front yards of Serb-owned houses.

45. In central and southern Croatia, the security situation has been generally calm, although there has been a slight increase in ethnically related incidents in Petrinja, Hrvatska Kostajnica, Karlovac and especially in Kistanje, where tension is said to be on the rise between Serb residents and Croat settlers from Kosovo.

46. Near Knin, the Special Rapporteur was present on 28 July 1999 at an unsuccessful attempt to execute a court order of the eviction of an illegal occupant, a Bosnian Croat from Tuzla. Although the authorities promised that they would do everything necessary to carry out the court order, there has been no progress in that or similar cases. The Special Rapporteur expresses his great concern at threats by the Croatian Party of Rights (HSP) that it will form intervention squads to prevent - by force, if necessary - the evictions of Bosnian Croat refugees illegally occupying Serb-owned property in the Knin area. It is unacceptable that a party that is represented in Parliament would use threats of violence to prevent the implementation of court decisions.

47. Besides the many unresolved property issues, much of the mounting tension in areas of return in Croatia can be blamed on the failure of the Government's Programme for the Establishment of Trust - set up in October 1997, and overseen by a National Committee - which has been ineffective and which lacks concrete programmes in the areas where they are most needed, namely at the local level.

B. Return-related issues

48. While the Special Rapporteur appreciates the Government's decision to accept several thousand Kosovar refugees in 1999 under a burden-sharing principle, he is disheartened to again report that there has been little substantial improvement in the Government's protection of the right to return to one's place of origin. The low number of returns of ethnic Serbs and the slow rate at which claims to citizenship are processed is of concern, especially in light of the winter 1999 Parliamentary elections. Considering the care that has been shown by the ruling party to grant citizenship, and thus voting rights, to the "diaspora" (ethnic Croats who live abroad), the Special Rapporteur places special emphasis on the rights of all those who qualify for Croatian citizenship, irrespective of ethnicity, and especially refugees, to claim citizenship in a timely manner, thus enabling them to participate in the forthcoming Croatian elections.

49. Return statistics for internally displaced persons and refugees are complicated by the fact that the publicized number of returns includes persons who have returned to Croatia, but have been unable to claim their properties. International organizations report that 39,812 ethnic Croats have returned to the Danube region from other areas of Croatia while 27,353 ethnic Serbs have returned from the Danube region to their homes elsewhere in the country, and 33,001 - of an estimated 250,000 ethnic Serbs who fled their homes during the conflict - have returned from the Federal Republic of Yugoslavia, Bosnia and Herzegovina and other countries. Regardless of the adoption in June 1998 of the

Programme for Return and Accommodation of Expelled Persons, Refugees and Displaced Persons (hereafter, "the Return Programme"), the large majority of returns has occurred without the active assistance of the Croatian Office for Displaced Persons and Refugees (ODPR) and the Office of the United Nations High Commissioner for Refugees (UNHCR). The ODPR has cooperated with UNHCR and its implementing partners to facilitate "go-and-see visits", allowing potential returnees to make informed decisions regarding return and to obtain personal documents. However, the low percentage of assisted returns points to problems with the return assistance mechanisms, specifically the slow work by the Ministry of the Interior in checking the citizenship of applicants, as well as the fact that returnees are not assisted if their house is occupied or heavily damaged. NGOs report that potential returnees are dissuaded from returning to their places of origin because of reports and rumours of the Government's non-implementation of the Return Programme, delayed issuance of social welfare, hostile attitudes, mines, and poor economic prospects in the former United Nations Sectors.

50. The Government of Croatia has been more successful in facilitating the return of ethnic Croat internally displaced persons (IDPs) to the Danube region, success accompanied by continued strains in inter-ethnic cooperation in the region, as well as the direct and indirect displacement of ethnic Serbs, both displaced persons and domiciled residents. Compared to other regions to which ethnic Serbs return, the Danube region continues to have housing disputes, sometimes with incidents of physical threats. Most Croat returnees face the same objective problems as other returnees, namely the assignment of their properties for temporary use by others. However, NGOs and international monitors report that ethnic Croat returnees are more successful in "convincing" the occupants of their properties to leave, whether through legal action or outright intimidation.

51. In relation to the Return Programme, the Special Rapporteur notes that regardless of recently proposed amendments, the Government has not yet fulfilled its commitment to amend certain discriminatory legislation, such as the Law on the Status of Expelled Persons and Refugees, the Law on Areas of Special State Concern, and the Law on Reconstruction. These three laws confer superior benefits upon ethnic Croats.

52. The Government has discontinued its efforts towards a solution for the widespread problems caused by the dissolution during the war of occupancy rights, a form of residential property ownership in the former Yugoslavia. In the update to his last report at the Commission on Human Rights, the Special Rapporteur welcomed the decision that requests for the return of property based on occupancy rights would be catalogued by the housing commissions, the local government bodies responsible for administering the property-related aspects of the Return Programme. In the Danube region, some citizens have been able to regain property on the basis of their former occupancy rights. However, the Special Rapporteur awaits further progress in this regard.

53. Regarding the slow implementation of the Return Programme, the Special Rapporteur continues to note what seems to be a lack of will on the part of both the central and local authorities, the Government Commission on Return and local housing commissions. The few housing commissions that attempt sincerely to

implement the Return Programme have their efforts blocked by the Government Commission's silence on related requests for alternative accommodation and its failure to process forms. The Government reported that as of 14 July 1999, 22 per cent of the 6,613 filed claims for property repossession had been completed. It should be duly noted that the Government faces a difficult economic challenge in regard to providing alternative accommodation. However, its failure to actively seek solutions to the issues relating to the return of ethnic Serbs, including the failure of some housing commissions - such as the one in Knin - to thoroughly catalogue available alternative accommodation, leads the Special Rapporteur to doubt the Government's claims of financial constraints as the main reason for poor implementation of the Return Programme. The Special Rapporteur expects that the administrative reorganization, by which the local housing commissions will be coordinated by the ODPR, will lead to improvements in the work of both the housing commissions and the central Government Commission.

54. In spite of the impressive record of the Government in reconstructing war-damaged houses and infrastructure, the Special Rapporteur notes that reconstruction continues according to ethnic priorities. In Lisane Ostrovicke, Knin municipality, for example, one ethnic Croat village has been reconstructed while two ethnic Serb villages have not. Of the 26 villages included in the Government's plans for reconstruction in Benkovac municipality, 20 are almost entirely inhabited by ethnic Croats. In six villages of mixed population, only houses owned by ethnic Croats are scheduled for reconstruction.

C. Administration of justice

55. The Special Rapporteur considers the persistent judicial vacancies to be egregious. Nearly all the branches of the judiciary have vacant positions: for example, as of October 1998, the Supreme Court and the Administrative Court, two branches of the judiciary that are crucial to the protection of human rights, had vacancy rates of over 30 and 35 per cent, respectively. The Korenica and Udbina civil courts were without judges from May 1998 until April 1999 while the Donji Lapac civil court has been without judges since 1995. Commendably, the Government has instituted an interim arrangement by which judges visit periodically, though this will not solve the problem of the large number of pending cases. All other courts in these communities are operational, a situation that enables the Government to deliver justice in cases of crimes and misdemeanours while leaving citizens unable to resolve their civil disputes, such as those involving housing, effectively hindering the property-related aspects of the Return Programme.

D. Labour rights

56. The Special Rapporteur welcomes the Constitutional Court's decision overturning the Zagreb city ordinance prohibiting demonstrations in the city's main square. He hopes that workers' rights to freedom of association, assembly and expression will be further protected, Croatia's economic difficulties notwithstanding.

57. The Special Rapporteur expresses concern for the many Croatian workers who receive their salaries late, if at all. Trade unions estimate that over 100,000 workers are affected. In some cases, when the responsible company is State owned, employees work without salaries or payments into their pension or health plans. Workers are without effective means for securing their wages as they are not legally protected when striking for the non-payment of their wages, and legal remedies are ineffective because of judicial inefficiency and the ability of employers to declare bankruptcy during hearings and thus avoid their obligation fully to remunerate employees, regardless of the trial's outcome.

58. The Special Rapporteur is also concerned about continued reports of harassment, including one case of severe beating, of union representatives, and expects that law enforcement and judicial officials will fully investigate and resolve these cases.

E. Freedom of expression

59. Government control of the electronic media sector as well as indirect pressure, both economic and legal, on press freedom remain major concerns of the Special Rapporteur. The legislation relating to media and information still falls short of addressing key concerns of international observers. To be highlighted are the need for legal amendments to transform Croatian Radio and Television (HRT) into a public service broadcaster, and the need for the removal of obstacles to the development of the private broadcasting sector, which could include, for instance, privatization of one of the HRT channels.

60. The Special Rapporteur condemns the use of defamation legislation to silence the media and journalists. Lawsuits by public figures for so-called "psychological anguish" have almost financially destroyed several independent magazines. At the same time, a scandal in which the State secret services were accused of having illegally wiretapped journalists and public figures has grown into a lawsuit in which a private magazine is suing the Ministry of the Interior.

61. The experience of Nacional, an independent weekly that is well known for its critical stance towards the Government, exemplifies the financial implications the above-mentioned lawsuits can have for the survival of newspapers and for their publishers. Most of the 78 lawsuits against Nacional have been filed by high-ranking government officials or party leaders and seek high compensation. Ante Bakovic, a retired Catholic priest with political connections, filed the last of the lawsuits against Nacional. Mr. Bakovic was awarded 200,000 kuna (US$ 28,570) for "psychological anguish", forcing the publisher to declare bankruptcy and discontinue printing. According to Feral Tribune, an independent weekly newspaper that is often critical of the Government and which faces the largest number of lawsuits, the total compensation sought for "psychological anguish" in the claims has reached 14,046,000 kuna (about US$ 2,006,570). Feral Tribune is thus also facing bankruptcy.

62. In this context, the Special Rapporteur would like to emphasize the role of the media in the forthcoming election in ensuring the population's right to

receive complete and impartial information. He recalls that the election observer mission of the OSCE concluded that the presidential elections of 15 June 1997 may have been free but were not fair, and did not meet minimum democratic standards because the State-owned media - particularly television - showed favouritism towards the ruling party.

F. Missing persons

63. Of the 1,703 persons officially listed in August 1999 as missing or detained since 1991 - and whom the Government is still tracing - 1,467 are Croats while the rest are Serbs, Hungarians, Bosnians, Russians, Ukrainians, Albanians and others. Since the start of the exhumation process in September 1995, a total of 2,990 bodies have been exhumed from both individual and mass graves in Croatia and 2,351 bodies have been identified, according to information provided to the Office of the United Nations High Commissioner for Human Rights by the Government Commission on Missing and Detained Persons. In 1999, 11 mass and individual graves were opened, nine of them in the Danube region. Also this year, a total of 168 persons were identified, including 154 persons exhumed from graves in the Danube region.

64. From 23 to 26 March, senior representatives of the Governments of Croatia, the Federal Republic of Yugoslavia and Bosnia and Herzegovina met in Amsterdam under the auspices of the International Commission on Missing Persons (ICMP) to try and speed up the process of solving the complex and politically sensitive issue of those who disappeared in the former Yugoslavia during the 1991-1995 conflicts. At the unilateral level, Croatia agreed at the conference to prepare a plan of action whose implementation would assist in clarifying the fate of those who went missing in connection with the Croatian army operations "Flash" and "Storm" in 1995. Croatia also notably agreed to take immediate action on the remaining administrative and legal measures to ensure the effective functioning of the subcommission established through an agreement with the former United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES) in January 1998. At the bilateral level, Croatia and the Federal Republic of Yugoslavia renewed their commitment to hold regular meetings and improve the level of cooperation between their respective missing persons commissions. However, as of August 1999 no follow-up meeting had been convened, despite the urging of international representatives.

65. At meetings this year of the Government Commission and the Federal Republic of Yugoslavia Commission for Humanitarian Issues and Missing Persons (hereinafter, "the Federal Republic of Yugoslavia Commission"), the Federal Republic of Yugoslavia Commission reportedly showed little willingness either to share information that would help trace those who went missing during the war or to service the request of the Croatian Government Commission for documentation on the more than 300 unidentified persons buried in the Federal Republic of Yugoslavia, most of whom were allegedly taken by force from Vukovar and other areas of the Danube region in 1991. When the next meeting of the Croatian and the Federal Republic of Yugoslavia missing persons commissions will take place depends on the willingness of the Federal Republic of Yugoslavia Commission to resume cooperation in tracing those who are unaccounted for, in accordance with the Agreement on Cooperation in the Tracing of Missing Persons (the Granic-

Milutinovic agreement, Dayton, 17 November 1995) and with the Protocol on Cooperation Between the National Commissions (the Grujic-Todorovic agreement, Zagreb, 16 April 1996).

G. Gender

66. The Special Rapporteur commends the initiative taken by the State Commission on Issues of Equality which organized a seminar in June 1999 in cooperation with the Council of Europe on the subject of domestic violence. The Commission, as well as other relevant State bodies, announced support for the proposal by non-governmental organizations that changes be made to the legislation which would allow public attorneys to prosecute criminal acts of domestic violence. Efforts will also be made to introduce changes through the Sabor (Parliament). Other strategies to combat domestic violence will also be initiated, depending on economic capabilities, jointly by NGOs and relevant State authorities.

67. The Special Rapporteur reiterates the importance of women's equal participation in the country's public, political and economic life. Women's greater representation in political and decision-making bodies would make it more likely that the concerns and needs of women are identified and their interests and rights represented and defended. The question of the introduction of quotas on political party candidate lists has been broached and is currently being discussed in light of the upcoming elections. NGOs working on the promotion and protection of women's rights have initiated a pre-election ad hoc coalition which, through its election platform, has taken measures to educate and raise women's awareness about candidates of parties that represent and promote women's interests.

H. War crimes trials

68. The issue of war crimes prosecutions in national courts remains a matter of great concern. Unreasonable delays in proceedings, doubts as to the fairness of trials, as well as a lack of transparency concerning new indictments have reinforced the belief on the part of the Serb population that they are being victimized by the Government on account of their ethnicity. The Special Rapporteur is concerned that new indictments and arrests in the Danube region on charges of war crimes have led to an increased sense of insecurity on the part of the Serb population and contributed to further departures from the region.

69. On 27 May 1999 the retrial of five individuals from the village of Sodolovci on charges of war crimes against the civilian population was concluded by the Osijek County Court (see E/CN.4/1999/42, paras. 49-51). The Court confirmed the previous convictions (which had been pronounced *in absentia*), with the exception of that of Goran Vusurovic, whose sentence was modified to eight years' imprisonment; the other four individuals all received sentences in excess of 10 years.

70. The Office of the United Nations High Commissioner for Human Rights has been following the case closely and has monitored the proceedings throughout.

The Special Rapporteur wishes to express his concern that this trial does not meet international standards of fair trial, specifically as regards the burden and standard of proof. The presumption of innocence, a basic component of the right to a fair trial and fundamental to the protection of human rights, implies that the burden of proof is on the prosecution and that guilt cannot be presumed. In the case of the Sodolovci group, at no time during the proceedings was credible evidence adduced by the prosecution sufficient to substantiate a charge of war crimes and it has not been established beyond reasonable doubt that the defendants committed the crime for which they were charged and convicted. Additional doubts have been raised regarding the impact of statements by public officials regarding the case which, according to some observers, were meant to influence the Court's ruling.

71. The case was followed closely by the Serb population in Croatia, particularly in the Danube region. The outcome was perceived as sending a clear message to the Serb population as to their prospects for receiving a fair trial and may be a further deterrent to the return of ethnic Serb refugees from the Federal Republic of Yugoslavia and Bosnia and Herzegovina.

72. In the case of Milos Horvat, discussed in several previous reports of the Special Rapporteur (see E/CN.4/1999/42, para. 52), the Supreme Court brought a decision on 16 December 1998 confirming his 1997 conviction on charges of genocide. The Special Rapporteur, however, expresses his concern that the written decision of the Supreme Court was delivered only on 30 June 1999.

73. The trial against a group of Croatian former reserve policemen, known as the Pakracka Poljana group, ended in Zagreb County Court on 31 May. The defendants were charged with harassment of several ethnic Serbs and the murder of one of the members of their unit in 1991. In 1996, one of the accused confessed in an interview with the weekly Feral Tribune that together with other reservists he had killed 72 Serbs. Charges against four defendants were dismissed, allegedly for lack of evidence and because of what the court considered to be contradictory testimony of witnesses. One of the remaining two was sentenced to 20 months in prison for extortion. A sixth defendant, accused of unlawful detention and deprivation of liberty and human rights, was sentenced to one year in prison. The Special Rapporteur expresses his great concern over the conduct of these proceedings, having in mind reports by the Office of the United Nations High Commissioner for Human Rights staff monitoring the trial that various witnesses, obviously frightened, claimed on the witness stand that they had forgotten everything relating to key facts in the case. At the time numerous supporters of the accused, dressed in black, were present in the courtroom. On one occasion, the Office of the United Nations High Commissioner for Human Rights staff observed these same supporters surrounding a witness in an intimidating manner during a break in the trial.

74. The level of cooperation of Croatian authorities with the International Tribunal for the Former Yugoslavia (ICTY) is a major concern of the Special Rapporteur who, while on mission in Croatia, was informed of the issues relating to the visit to Croatia of the Chief Prosecutor. Croatian authorities were accused by the Chief Prosecutor of delaying action on two key issues: first, requests from the Tribunal for assistance with its investigations of war crimes committed by the Croatian army in 1995 and second, the transfer to the ICTY of

two Bosnian Croats, Vinko Martinovic (known as Stela) and Mladen Naletilic (Tuta), indicted by the Tribunal for war crimes, until the co-accused had served sentences in Croatia on separate charges. The ICTY was considering, at the time of writing of the present report, the possibility of reporting the matter to the Security Council.

I. Conclusions and recommendations

75. The Government should finally decide upon a solution to the problem raised by the wartime law abolishing occupancy rights and the dubious application of this law. In this regard, the Special Rapporteur emphasizes the need for the Government to facilitate the repossession of property lost because of war-era legislation and illegal occupation and further recommends that the Government continue strengthening its cooperation with the OSCE and UNHCR in order to improve the effectiveness of the Return Programme. International monitors observing proceedings of the housing commissions should be granted full access to files and meetings, and housing commissions should earnestly proceed in accordance with the guidelines provided to them, which would mean that all applications would be dealt with expeditiously.

76. The Special Rapporteur reminds the Government that an independent and effective judiciary is indispensable for fostering the rule of law. Furthermore, he recommends that all judges and prosecutors be trained in the relationship of domestic law to the international human rights instruments that the Republic of Croatia has ratified.

77. While appreciating the difficult challenge that the Government faces in revitalizing companies, such as those in the tourist industry, the Special Rapporteur notes that employees must either be guaranteed their salaries or effective legal remedies through which salaries can be claimed.

78. With reference to the provisions of the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto, in particular the general principle governing the right of families to know the fate of their relatives, and to the Government's Programme for the Establishment of Trust, the Special Rapporteur calls upon the Government to continue to actively address the issue of missing persons in Croatia and in particular to clarify the fate of hundreds of Croatian Serbs who went missing before, during and after the military operations "Flash" and "Storm" in 1995. The speedy resolution of these cases is of great importance not only to those who seek information about the fate of loved ones but also to re-establish confidence.

79. The primary responsibility for resolving cases of missing persons rests with institutions of the Government, such as the Commission for Detained and Missing Persons and its Subcommission in the Danube region, which need to start functioning effectively. In this context, the Special Rapporteur sees the current nominations of ethnic Serb representatives to both the Government Commission and the Subcommission as a valuable contribution to the process of finding those who disappeared during the war.

80. Moreover, as a means to bolster inter-ethnic confidence in the Danube region, the Special Rapporteur concurs with international representatives that the post of Assistant Minister of the Interior - vacant since January 1999 - could usefully be filled by an ethnic Serb, and that the local police force should maintain the agreed ethnic balance, following the dismissal of three Serb police station commanders.

81. The Special Rapporteur wishes to express, once again, his concern at the ruling party's domination of the media in Croatia and urges the Government to adopt the requisite measures to ensure that public broadcasting fulfils a public-interest mandate and is entirely independent of political or financial interests. With regard to defamation suits, due attention should be given to the importance of free political debate in a democratic society, and to the fact that public figures must expect to tolerate a greater degree of criticism than private individuals.

82. The Special Rapporteur commends the initiatives of the State Commission on Issues of Equality in regard to changes in the legislation and supports its efforts in promoting and integrating gender issues into the country's public agenda, that is, organizing conferences that promote women's rights and interests, initiating gender studies at universities and mainstreaming gender into all spheres of society through cooperation with United Nations agencies specializing in this theme.

83. The Special Rapporteur encourages the cooperation of the State Commission on Issues of Equality, relevant State bodies and NGOs with the Office of the United Nations High Commissioner for Human Rights in integrating gender perspectives into the technical cooperation project initiated recently aimed at mainstreaming gender into all structures of society, educating and training specific groups of professionals, and raising the awareness of the general public on gender-related issues.

84. The Special Rapporteur again wishes to emphasize that all war crimes must be investigated and tried in accordance with international standards, and that perpetrators of war crimes must be brought to justice. However, unreasonable delays in proceedings, doubts as to the fairness of trials, as well as a lack of transparency concerning new indictments have resulted in an increased sense on the part of the Serb population of being victimized by the Government on account of their ethnicity. This has contributed neither to the goal of reconciliation nor to the institution of accountability for war crimes. It can also be considered as a significant deterrent to the return of refugees of Serb ethnicity to the Republic of Croatia.

85. Finally, the Special Rapporteur would like to repeat his previous recommendation that future war crimes investigations and trials be processed with the participation of international monitors, thus ensuring transparency and a process that reassures the Serb population that war crimes prosecutions transcend victor's justice.

V. FEDERAL REPUBLIC OF YUGOSLAVIA

86. The present report focuses on the period from mid-March 1999 through mid-August 1999, including the period of the NATO air campaign against the Federal Republic of Yugoslavia from 24 March through the signing of the military agreement on 9 June 1999, and subsequent developments. Since his most recent report to the Commission on Human Rights in April 1999, the Special Rapporteur has conducted three additional missions, together with staff of the Office of the United Nations High Commissioner for Human Rights, to the country: (a) 26-30 April 1999 to Montenegro, including part of Sandzak; (b) 8-12 June 1999 to Vojvodina and central Serbia; and (c) 7-12 July 1999 throughout Kosovo. In April 1999, the Special Rapporteur conducted a special mission to the former Yugoslav Republic of Macedonia to inquire into the situation of Kosovo refugees, which drew on the work of the Office of the United Nations High Commissioner for Human Rights Kosovo Emergency Operation.

A. Sources of information

87. The Special Rapporteur bases this report on first-hand observations during wartime, immediately after the signing of the military agreement, and shortly after the arrival of troops of the international security force in Kosovo (KFOR) and the establishment of the United Nations mission in Kosovo. He directly experienced the air campaign; NATO's heaviest strikes on Podgorica during the entire war dramatically interrupted the Special Rapporteur's meetings there. He visited at length with Serb, Roma and Albanian IDPs from Kosovo in Serbia and Montenegro and with Kosovo Albanian refugees in the former Yugoslav Republic of Macedonia. He spoke with representatives of NGOs, political, intellectual and religious leaders, and independent media representatives. The Special Rapporteur also visited sites of civilian casualties of armed action. Among other officials, he met with the Minister for Foreign Affairs of the Federal Republic of Yugoslavia, the President of Montenegro, and the Special Representative of the Secretary-General. The Special Rapporteur's missions to the Federal Republic of Yugoslavia are supported by the Office of the United Nations High Commissioner for Human Rights, which continued its operations inside the Federal Republic of Yugoslavia during the war and mounted an additional Kosovo Emergency Operation to monitor and report on the situation of Kosovo Albanian refugees and IDPs.

B. Relations with the Federal Republic of Yugoslavia

88. Since his appointment, the Special Rapporteur has enjoyed the cooperation of the Federal Ministry for Foreign Affairs in carrying out his visits to the Federal Republic of Yugoslavia. The Foreign Ministry itself was damaged in an air strike, and Ministry officials working in difficult circumstances supported the Special Rapporteur's June mission. However, he notes with grave concern that despite that history of cooperation, the following incidents took place during the period covered by this report, all of which impeded the Special Rapporteur's missions: (a) denial of access to the Office of the United Nations High Commissioner for Human Rights office in Belgrade, a diplomatic mission, by federal and Serbian police; (b) seizure by Federal Republic of Yugoslavia

authorities of all three Office of the United Nations High Commissioner for Human Rights vehicles in Serbia, only one of which had been returned as of this writing; and (c) repeated violations by federal and republic police of the Office of the United Nations High Commissioner for Human Rights's status agreement and the privileges and immunities accorded thereunder. The Special Rapporteur recalls with equally grave concern that his first mission to the Federal Republic of Yugoslavia during wartime was imperilled when Yugoslav army reservists under the jurisdiction of the Second Army searched and seized under force of arms the vehicle of the Office of the United Nations High Commissioner for Human Rights Chief of Mission and detained for nearly three hours under repeated threats of violence the Chief of Mission and its legal adviser, who were en route to meet the Special Rapporteur.

89. The Special Rapporteur expresses particular gratitude to the Government of the Republic of Montenegro, particularly the Office of the President and the Ministry of the Interior, for special efforts undertaken to facilitate his travel and that of the Office of the United Nations High Commissioner for Human Rights staff accompanying him, to support his missions and, in particular, to safeguard the personnel and property of the Office of the United Nations High Commissioner for Human Rights. The Special Rapporteur also expresses his appreciation to the Ministry for Protection of the Rights of National Minorities of Montenegro for the ongoing support it has provided to his work.

C. General observations

90. The scope of the human and material tragedy sparked by the crisis in Kosovo, but caused by systemic failures to respect or protect human rights throughout the Federal Republic of Yugoslavia, is still being calculated. Seen from the perspective of accomplishments in the field of human rights, however, it is difficult to assess what 78 days of war achieved.

91. The litany of tragedy is overwhelming: mass expulsion and ethnic cleansing of hundreds of thousands of Kosovo Albanians; killings of as-yet-untold numbers of civilians as new mass graves continue to be discovered in Kosovo; arrest and arbitrary detention of several thousand Kosovo Albanians, now held in prisons in Serbia; systematic destruction of whole villages, neighbourhoods, means of livelihood and the homes of selected individuals; rape as an instrument of terror; use of landmines and depleted uranium ammunition; "collateral damage" to civilians, caused in particular by cluster bombs; forced mobilization; destruction of civilian transport, communications and public utilities infrastructure; mass unemployment and impoverishment; suppression of civil freedoms, including freedom of expression; targeted killings of journalists; martial law; deliberate destruction of religious and cultural monuments; murder and abduction of hundreds of individuals; and the ethnic cleansing of nearly 200,000 non-Albanians from Kosovo. Of the thousands of deaths since 24 March, including those of human rights proponents, community activists and religious leaders, three activists whose company the Special Rapporteur had himself shared on many occasions - attorney Bajram Kelmendi, editor Slavko Curuvija, and scholar and political leader Fehmi Agani - were murdered.

92. In mid-March, the Special Rapporteur completed his fifth mission to the Federal Republic of Yugoslavia. His conclusions serve as a baseline against which the situation of human rights in mid-August can be measured. At that time, the Special Rapporteur observed that incidents involving substantial violations of human rights had increased dramatically, not only in total number of incidents, but in severity and types of violations. Infrastructure that could support protection of human rights through rule of law, democracy and freedom of expression not only had not developed, but had deteriorated in most regions of the country. Relations between Serbia and Montenegro were more strained than at any point since the establishment of a Yugoslav State. Internationally brokered support for autonomy for Kosovo was affecting relations between national communities in Montenegro and Serbia, particularly in Vojvodina and Sandzak. International efforts had failed to produce a political agreement in Kosovo. Without a political agreement among the parties or even minimal progress towards an agreement, it was unclear what institutions would ultimately provide the framework for the realization of fundamental social, political and human rights in Kosovo. At the fundamental level of interaction between Government and individual, the residents of Kosovo, regardless of national identification, did not know how they would ultimately be governed. During spring 1999, field interviews conducted by the Special Rapporteur and the Office of the United Nations High Commissioner for Human Rights suggested that the residents of Kosovo believed that virtually every institution affecting their daily life was under scrutiny and that existing arrangements, even the most minute dealings with administration, were likely to change in some way. At that time, the Special Rapporteur expressed his concern over growing lawlessness and licence.

93. In mid-August, the Special Rapporteur observes that those fundamental conclusions are still applicable to the situation of human rights in the Federal Republic of Yugoslavia.

D. Casualties

94. As of mid-March 1999, using public sources and tabulating daily reports, the Office of the United Nations High Commissioner for Human Rights had registered approximately 1,818 violent deaths in Kosovo since February 1998, a figure that includes persons identified in State sources as belonging to the police or army and in Kosovo Albanian sources as members of the Kosovo Liberation Army (KLA). Subject to a margin of error, the figure corresponds with data released independently by several sources and generally accepted at the time. As of mid-August, the exact number of casualties of the Kosovo conflict is unknown. In Provisional assessment of destruction and damages caused by the NATO aggression on the Federal Republic of Yugoslavia (July 1999), Federal Republic of Yugoslavia official sources cite the deaths of "several thousand" civilians, 30 per cent of whom were children, and over 6,000 injuries, 40 per cent of them suffered by children. The assessment notes the deaths of 462 members of the Yugoslav army and 114 members of the Serbian Ministry of the Interior. The Government of the Federal Republic of Yugoslavia has released NATO Crimes in Yugoslavia, a compendium of documentary evidence on deaths and damages caused by air strikes, including at sites directly observed by the Special Rapporteur and/or the Office of the United Nations High Commissioner for

Human Rights. These are discussed in greater detail below. However, the compendium does not fully address the scope of destruction inside Kosovo.

95. Given the magnitude of the Federal Republic of Yugoslavia and Serbian operations, and NATO's uninterrupted massive bombing of Kosovo, the number of persons killed within Kosovo during the war is unlikely ever to be accurately known. The Special Rapporteur has heard testimony and seen evidence of deliberate burning of bodies, as well as the incineration of bodies at high temperature due to their proximity to exploding ordnance. More victims of violent death are discovered every day in Kosovo, so routinely that the daily discovery of "old bodies" is not even publicly reported by KFOR unless they are discovered in large mass graves. The United Nations Mission in Kosovo has yet to establish a standard procedure for identifying bodies or recording recent deaths, much less establishing a register of deaths that occurred during the war. As a result, it is not possible at this time even to estimate how many persons died as a result of violence inside Kosovo.

1. During the war

(a) Ground activity

96. During missions inside Kosovo during and after the war, the Special Rapporteur and the Office of the United Nations High Commissioner for Human Rights observed first-hand the situation on the ground, including repeated NATO air strikes in progress. Inside and outside the Federal Republic of Yugoslavia, they spoke with many Kosovo Albanian, Serb and other refugees and IDPs, including IDPs inside Kosovo during the war. They spoke with local officials, including those inside Kosovo. As a result of these inquiries, the Special Rapporteur concludes that most of the deaths and damage inside Kosovo resulted from a systematic campaign of ethnic cleansing and terror waged on the ground by Federal Republic of Yugoslavia and Serbian forces against Kosovo Albanians. While many from Kosovo expressed fear of NATO air strikes, they expressed more fear of the activity of the Yugoslav army, Serbian police, special police, State security and paramilitaries. The International Tribunal for the former Yugoslavia has concluded that it has evidence sufficient to support an indictment for crimes against humanity against the President of the Federal Republic of Yugoslavia, the President of the Republic of Serbia, the Minister of the Interior of Serbia, the chief of staff of the Yugoslav army, and other officials.

97. Before the war, violations of human rights, including forced disappearances and summary executions, had been attributed to the KLA. Since the war, the KLA has also been charged with organizing forced disappearances, the victims of which have been found in mass graves. In his effort to assess the effect of the war on civilians, the Special Rapporteur notes an almost complete lack of available information on the activity of the KLA inside Kosovo during the war. While describing the positions of Federal Republic of Yugoslavia and Serbian forces, NATO briefings were noticeably silent on the matter of KLA positions inside Kosovo and shed no light on KLA activity there. Official Federal Republic of Yugoslavia sources, which actively circulated accounts of actions

attributed to Kosovo Albanian paramilitaries before the war and reports on crimes attributed to the KLA after the war, do not describe the activity of the KLA during the war. Even the KLA itself is silent: its commander has yet to respond to the Special Rapporteur's request for copies of all KLA public communiqués. The Special Rapporteur notes that for the sake of accuracy in analysing the pattern of human rights violations inside Kosovo, information on armed encounters on the ground is essential.

98. A report of this nature is insufficient to recount the detail, nature and scale of violations, which range from discriminatory treatment and harassment to summary execution, forced disappearances and killings. The Special Rapporteur does not contend that NATO air strikes caused the massive violations of human rights in Kosovo. He does contend, however, that NATO air strikes not only failed to prevent humanitarian catastrophe, as evidenced by the hundreds of thousands of persons who fled the province, but did not prevent Federal Republic of Yugoslavia and Serbian forces from conducting a systematic campaign of terror that quantitatively differed from the armed activity in the months immediately preceding the war and that began in full ferocity with the start of the NATO campaign.

99. Throughout the Federal Republic of Yugoslavia, in each republic and province without exception, all who communicated with the Special Rapporteur or the Office of the United Nations High Commissioner for Human Rights expressed fear for survival and fear for the future. Regardless of ethnic group, political affiliation, socioeconomic status, gender or age, all interlocutors described how they had come to cope with terror and uncertainty. From the perspective of the civilian population, the territory of the Federal Republic of Yugoslavia during the war was a killing field, the victims depending on what different men in different uniforms determined on different days.

(b) Rule of law

100. The first casualty of the war was the rule of law. During the war, the Federal Minister of Justice reminded the Special Rapporteur of the need to uphold international legal obligations to which the Federal Republic of Yugoslavia and the NATO countries were parties. Within the Federal Republic of Yugoslavia, formal declaration of martial law gave officials of the Ministry of the Interior and the Yugoslav army vast powers over most areas of civil activity. Moreover, even in substantive areas where such power had not been formally extended to the military by the civil authorities, the Special Rapporteur noted that the Yugoslav army and Serbian police either took or were granted effective control. The Republic of Montenegro did not recognize the declaration of martial law, but actions by the Yugoslav army on the territory of Montenegro challenged and threatened civil authority in that republic. Federal authorities denied the immunity of elected or appointed officials by attempting to mobilize them, and the army moved to arrest several officials in Serbia and in Montenegro for refusing mobilization notices. Charges were brought against the elected mayor of Cacak for disturbing public order, based on statements the mayor had made attributing responsibility for the social dislocation caused by the war. Changes to the Law on Criminal Procedure removed many legal protections of the accused and substituted expedited procedures that allowed,

for example, for searches without prior warrants and police investigations without prior request of the court or State prosecutor.

(c) Freedom of expression

101. Other casualties of the war were freedom of expression and access to information. Journalism and journalists suffered disproportionately in the conflict. Within the Federal Republic of Yugoslavia, restrictions on information inherent in martial law placed the army in control of public information management. Outside the Federal Republic of Yugoslavia, EUTELSAT did not permit satellite broadcast of Serbian State television. Radio and television towers were bombed, as were the Belgrade headquarters of Radio Television Serbia on 23 April, resulting in the deaths of 16 employees. The editor of an independent newspaper, Slavko Curuvija, was assassinated in Belgrade shortly after he was accused in the State-affiliated media of being a traitor. Journalists were among the casualties of NATO's bombing of the Chinese embassy on 7/8 May. Throughout Serbia and Montenegro, foreign and domestic journalists were brought to "informative talks", detained, imprisoned, and charged in proceedings before military courts. In Montenegro, the Yugoslav army attempted forcibly to conscript journalists from independent media, and republic authorities interrogated the Podgorica bureau chief of Belgrade's official Politika newspaper. In many parts of Serbia, there were no newspapers to be bought, and no radio or television coverage. NATO's attacks on communications infrastructure severely damaged telephone service to many areas of the country. According to the Decree on Internal Affairs During the State of War, even private correspondence and other communications were opened and accessed in the interest of security and national defence.

(d) Effects of air strikes

102. Outside Kosovo, the NATO air campaign was especially intensive in the densely populated centres of Vojvodina, southern Serbia, and in Belgrade itself. This report is insufficient to list all the losses suffered by civilians, and the Special Rapporteur mentions here some of the sites he and the Office of the United Nations High Commissioner for Human Rights have themselves visited. The repeated bombing of industrial facilities in Pancevo, including a petrochemical plant, a fertilizer plant and an oil refinery, caused fumes and fires that were smouldering during the Special Rapporteur's visit. The damage done in and around industrial centres in Pancevo, where large quantities of mercury were stored on site; Kragujevac, where high levels of PCBs were used in production; Bor and Pristina, as well as biodamage to selected national parks, is the subject of continuing concern and ecological study by the United Nations and environmental groups. Several city centres suffered from missile or cluster bomb attacks. Repeated attacks on Nis resulted not only in the destruction of that city's industrial capacity but, on 7 May, in the deaths of 15 civilians when cluster bombs exploded over the city market and central hospital. In Aleksinac, 12 civilians were killed and more than 40 wounded when bombs struck downtown housing blocks and commercial premises on 5 April. In Novi Pazar, 13 were killed and 35 wounded in an attack that destroyed 25 buildings in the city's residential centre. Many civilians, including 27 children, died in repeated strikes on Surdulica and Kursumlija.

103. NATO's rules of engagement, notably the height at which bombers flew, continue to spark controversy. Strikes on bridges and means of transportation resulted in the deaths of 55 persons on a passenger train in Grdelica gorge (12 April); 60 persons were killed when a bus was hit on a bridge near Luzani, (1 May); 20 persons were killed when a bus travelling between Pec and Rozaje was hit (3/4 May). Large convoys moving through Kosovo were attacked by air, resulting in the deaths of 87 IDPs at Korisa on 14 May; one month earlier, 75 persons, including 19 children, died when missiles struck refugee columns on the Djakovica-Prizren road. All three bridges in Novi Sad were destroyed, as well as the water pipes that supplied potable water to nearly half the city. The strikes led as-yet-uncalculated numbers of persons to seek shelter in what were perceived to be "safe" locations outside cities. Children, in particular, were sent away from their parents and in Serbia did not resume the school year. Parents in Belgrade and Stimlje complained of the effects on their children of unhygienic and psychologically unhealthy conditions in air raid shelters. In Belgrade, parents and children spent an average of 10 hours per day in basement shelters. Following NATO attacks on fuel reserves, severe restrictions on fuel imposed by authorities effectively brought civilian Serbia to a standstill. At this writing, fuel is rationed in Serbia. Many parts of the country were often without electricity and water, and restrictions and shortages continue. Throughout the Federal Republic of Yugoslavia, damage done to the infrastructure of public utilities threatens a catastrophic winter. Few countries have offered humanitarian aid or assistance with winterization to persons not in Kosovo who suffered the consequences of war.

(e) Yugoslav army and reservists in Montenegro

104. In Montenegro, the large number and pervasive presence of the Yugoslav army, army reservists and military police gave rise to internal tensions and human rights violations. On 18 April, eight persons were killed by Yugoslav army reservists in Kaluderski Laz, near Rozaje. Among the dead were an elderly woman and a 13-year-old boy. The event sparked fears in that region of Montenegro, through which most Kosovo IDPs passed, and prompted some IDPs from Kosovo and many of the region's native Muslim population to move to Bosnia and Herzegovina.

105. The Special Rapporteur received several reports of military police and reservists in or near northern Montenegro stopping civilian buses and taking away large groups of men before permitting women and children to continue. He was able to interview witnesses to one such removal. On 15 May, between Serbia and Montenegro, 102 men were removed by Federal Republic of Yugoslavia military police from public buses travelling from Kosovska Mitrovica to Rozaje. The men were transported to Rozaje by military police who, according to the witnesses, stripped them of all valuables. In Rozaje, the military police were replaced by army reservists, who in turn were replaced by a new group of reservists, this time masked, on the road to Tutin. Both groups of reservists beat the passengers throughout the journey. Witnesses told the Special Rapporteur that outside Tutin, a group of ten were forced to engage in sexual acts while others were forced to watch. On arriving in Tutin, the passengers were forced through a gauntlet of masked reservists who beat, kicked and truncheoned them. Afterwards, they were turned over to the custody of the civil police, who did not allow the reservists further access to the passengers; at the police station

the passengers encountered another group of 56 men. After interventions by the Office of the United Nations High Commissioner for Human Rights, UNHCR, and the Ministries of the Interior and National Minorities of Montenegro, all 158 men were released the next day and returned by civilian bus to Rozaje.

(f) Kosovo

106. The human rights violation in Kosovo most often described to the Special Rapporteur was forced expulsion. Many persons described families expelled house-by-house from villages or neighbourhoods, seeing columns of people herded through the streets of cities by men in uniform, being forced to walk for days, fearing men in masks or men in uniform. Accounts by refugees in the former Yugoslav Republic of Macedonia and Albania conform to accounts by IDPs in Montenegro and those within Kosovo with whom the Special Rapporteur and Office of the United Nations High Commissioner for Human Rights spoke during the war. They differ in the amount of time a family was given when being ordered from their home; whether those giving the order were masked or unmasked, personally known or unknown to the family, in uniform or in civilian clothing; whether identity documents were requested or destroyed; whether family members were killed or detained as they fled; whether persons were permitted to leave in vehicles or ordered to leave on foot. IDPs travelling in columns said that valuables were extorted from them by army and police en route and at checkpoints.

107. A full account of what happened in villages and cities of Kosovo from 24 March through 10 June remains to be written. Parts of the story will emerge with the ongoing work of the ICTY, as well as the work of the Office of the United Nations High Commissioner for Human Rights, UNHCR, OSCE, and domestic and international NGOs. The Special Rapporteur has made a particular effort to gather information from persons who remained in Kosovo during the war. As noted above, the Special Rapporteur and the Office of the United Nations High Commissioner for Human Rights spoke with representatives of many ethnic groups, different political parties, internally displaced persons, returned residents, and residents who remained in their homes. Some interlocutors were intellectuals or members of the middle class; others could not read or write. Their accounts agree that the period roughly from 24 March to 10 April was a rampage of killing, burning, looting, forced expulsion and terror. Residents of some cities described isolated exchanges of fire between Serbian security forces and the KLA who had entered urban areas during that period. After the first 10-15 days of NATO attacks, the pace and intensity of developments differed from village to village. In Pristina, local authorities moved to control the scope of the rampage after the first 10-15 days and after one police officer shot another police officer, whereupon the city forbade the sale of alcohol. Large-scale arrests of criminal perpetrators followed. Authorities acknowledge that capital crimes did not end in Pristina after that time, but were attributed to "unknown perpetrators". During the war, the Office of the United Nations High Commissioner for Human Rights witnessed on different occasions the burning and looting of property in Pristina municipality. One factor in the violence appears to have been whether a neighbourhood, city or village was controlled by local police or locally mobilized military, or by police and military from other parts of the Federal Republic of Yugoslavia. All civilian accounts agree that paramilitaries often accompanied police and army forces.

108. In mid-May, the larger cities of Kosovo saw sweeping mass arrests of men of military age. Family members and witnesses in Pristina, Pec, Djakovica, Mitrovica, Gnjilane, Prizren and surrounding villages have described these arrests. In many cities, the mass arrests were followed by large-scale campaigns to register residents, who were required at all times to carry registration cards issued by the police. Throughout the war and afterwards, the Special Rapporteur and the Office of the United Nations High Commissioner for Human Rights inquired with federal and republic authorities into the status and whereabouts of the nearly 2,000 detainees who were in various phases of court proceedings on charges of anti-State activity as of 24 March. During the period 19-24 May, NATO repeatedly attacked the Dubrava court detention centre at Istok on at least three separate occasions. The pattern of repeated, consecutive attacks on different days on the same location followed a pattern observed on many previous occasions during the war, including NATO's attacks on the federal and republic Ministries of the Interior in Belgrade. Casualties reportedly rose with each attack on the Istok detention centre: in the first attack, 3 persons were reported killed; in the next, 19; in the next, "over 100".

(g) Refugees

109. The Federal Republic of Yugoslavia has the largest refugee caseload in Europe, conservatively estimated before the war at 500,000 persons from Bosnia and Herzegovina and the Republic of Croatia. The war slowed or completely stopped the process of refugee returns to Croatia, halted the integration of refugees into Yugoslav society, interrupted the resettlement of refugees to third countries, and prevented the regular flow of humanitarian aid on which refugees in the Federal Republic of Yugoslavia depend. Several collective centres were the targets of attack. In early April, NATO bombed two bridges connecting the Federal Republic of Yugoslavia to Croatia; the bridges linked refugee and minority communities in Vojvodina and Croatia. The relevance of the Backa Palanka-Ilok and Bogojevo-Erdut bridges to the conflict in Kosovo or to Federal Republic of Yugoslavia military supply lines remains unclear to the Special Rapporteur.

(h) Individual cases

110. Among the many individual cases followed closely by the Special Rapporteur, he notes the following:

> During and after the war, the Special Rapporteur and the Office of the United Nations High Commissioner for Human Rights repeatedly inquired with federal, republic and local officials into the fate and whereabouts of Ukqim Hoti who, after completing a five-year sentence served largely in Sremska Mitrovica, was transferred from prison in Vojvodina to Dubrava prison in Kosovo during the war. Since the date of his scheduled release from prison, there has been no word of Mr. Hoti's whereabouts.
>
> On 29 May, three Australian CARE workers - two internationals, arrested at the Croatian border, and Branko Jelem, arrested later at his home in Nis - were convicted by the Military Court in Belgrade on charges of espionage. The sentences for the humanitarian aid workers, originally set by the court

of first instance at 12, 4 and 6 years, were reduced on appeal to 8, 1 and 3 years, respectively.

2. After the war

111. With the lifting of martial law, public political activity resumed in Serbia, but many of the independent media closed during the war did not reopen. Demanding the ouster of President Milosevic, hundreds of thousands of persons participated in peaceful demonstrations and petition campaigns in Leskovac, Valjevo, Kragujevac, Gornji Milanovac, Bor, Krusevac, Prokuplje, Sremska Mitrovica, Kula, Vrbas, Pancevo, Zrenjanin, Novi Sad, Vrsac, Becej, Svilajnac, Nis, Pozega, Loznica, Pirot, Zabalj, Ruma, Pozarevac, Sabac, Uzice and Belgrade. Protesting against non-payment of wages for the periods they had spent in Kosovo, Yugoslav army reservists blocked roads in cities in southern Serbia and went on hunger strike in Nis. The Government of Montenegro adopted a platform proposing substantially diminished authority of the federal State in an "association" of Serbia and Montenegro. Here, however, the Special Rapporteur concentrates on developments in and immediately surrounding Kosovo.

112. In a law and order vacuum, human rights violations in Kosovo have occurred with virtual impunity, despite efforts by the United Nations Mission in Kosovo (UNMIK) to establish a temporary judiciary. Killings, abductions, destruction of property, particularly the burning of houses, and continued displacements of non-Albanians and "politically suspect" Kosovo Albanians reflect the failure of the international community to place the territory under control, secure the peace, and provide the basic services and protections of governance. Many violations of human rights now being perpetrated by non-State actors are not dissimilar to those which preceded NATO intervention in March. UNHCR and Federal Republic of Yugoslavia sources agree that approximately 200,000 non-Albanians have left Kosovo. If the rate of departure of Serbs continues, and if none are able to return, there will likely be no Serbs in Kosovo south of the Ibar river by the time this report is officially released. Violence and harassment are not limited to inter-ethnic conflict, as Albanians are being called in by KLA "police" for "informative talks". Albanians at this writing make up nearly half the recent casualty figures for violent deaths.

113. From 15 June-14 August, according to KFOR statistics, 280 persons were murdered in Kosovo, at a rate of 30-40 murders per week. The recent killings of Serbs, Kosovo Albanians, Roma and others are attributed to Kosovo Albanian paramilitaries. At this writing, one new grave containing 11 bodies, with 4 additional bodies nearby, has been discovered near Gnjilane. Fifteen of those persons are believed to have been shot on 24 July, the day after 14 Serb farmers were ambushed and shot while tending their fields in Staro Gracko. The Special Rapporteur has observed, in most cases, systematic selection of individual victims or groups of victims, based on what appears to be intelligence on their career or backgrounds: university professors, medical personnel, persons who replaced Albanian workers fired in 1991/92, even elderly spouses of former minor politicians or business executives have been targeted. Persons accused of "collaboration" with Serbian authorities, a charge which has been broadly levelled against many Roma, have also been targeted. Being employed by government or social services, or staying on the job during mandatory wartime

work regulations have been sufficient grounds for the beating or harassment of Albanians and Roma for "collaboration". Persons in "mixed marriages" have also been targets of harassment and intimidation. Kidnapping continues: by mid-August, KFOR had registered 110 cases. Military police in Pristina and Mitrovica report that unless kidnap victims are found within a matter of hours, they will most likely be found dead in those cities.

114. Other incidents have been directed at Serbs for merely being Serbs, including identifying through parallel KLA "authorities" the houses in which they live, forcibly evicting them from their homes and apartments, and seizing all Serb-owned commercial properties. In recent weeks, attacks against Serbs, particularly women and the elderly, have increased in number and level of violence. In late July, an elderly woman was beaten and gang-raped in her Pristina apartment. On 15 August, an elderly woman was beaten to death in her flat in the centre of Pristina. Given the precarious security situation, many Serbs - particularly the vulnerable elderly - have virtually no freedom of movement and are essentially prisoners in their own homes. This desperate situation has resulted in the need for humanitarian evacuation from Kosovo in some circumstances.

115. Through an ongoing "ethnic concentration process", Albanians and non-Albanians are leaving multi-ethnic villages for ethnically "pure" enclaves. Serbs, in particular, have retreated to areas immediately around Orthodox churches and monasteries in Gnjilane, Pec, Djakovica and Prizren. At this writing, however, over 30 Orthodox churches and monasteries had been destroyed or damaged. Roma have been particularly subject to attack and, after concentrating in enclaves in late June, thousands have been leaving Kosovo or trying to leave Kosovo but have been turned back.

116. From the Serbian towns of Medvedja, Bujanovac and Presevo, outside of Kosovo, ethnic Albanian IDPs have been moving into Kosovo, particularly into Gnjilane, where they have told the Office of the United Nations High Commissioner for Human Rights that they were forced out by Serbian police and the Yugoslav army, and into the former Yugoslav Republic of Macedonia. They report substantial damage to Albanian-owned properties in the towns, loss of revenues and supplies to quartered troops and police, loss of use of properties and lands in the demilitarized zone, mistreatment at the hands of military and police, forced evictions, and violence against the resident Albanian population.

117. In Pristina and Prizren, houses presumably owned by Serbs and Roma that have been destroyed by fire or explosion have been razed and all traces removed within a few days. This not only eliminates evidence of the crime, but will likely frustrate the ability of the owner to make any property claim when such procedure becomes possible, particularly as new structures are built on the sites. In Prizren, however, UNMIK is attempting to take action against illegal construction.

118. The Special Rapporteur draws special attention to the situation of Muslim Slavs, including Bosniaks. This group was often targeted or harassed during the war as being "anti-Serb" - and it is being targeted and harassed after the war, predicated often on use of language: Muslim Slavs/Bosniaks do not, as a rule, speak Albanian. During the war, the enclave of Mitrovica known as the "Bosnian

quarter" was partially destroyed and seriously damaged. Since the war, approximately 10 Bosniaks, mostly elderly persons, have been killed by Albanians, some reportedly in KLA uniforms, in the vicinity of Pec. Reportedly, at least one of these persons was kidnapped and held in prolonged detention before the discovery of his dead body. There are also reports that Bosniaks have gone missing in Prizren and Klina.

119. Neither the Kumanovo agreement nor the undertaking with the KLA makes any mention of prisoners or detainees. The failure of military actors to address this question has created human rights crises that have become major political issues. The situation of persons transferred from Kosovo to prisons further north in Serbia is the subject of frequent demonstrations by family members. In late June, without answering direct or prior appeals for information from the Office of the United Nations High Commissioner for Human Rights or the Special Rapporteur, Serbian authorities released a list of 2,071 detainees being held in prisons throughout Serbia. The list did not specify the criminal basis for detention. Some names on the list were those of persons known to the International Committee of the Red Cross (ICRC) and the Office of the United Nations High Commissioner for Human Rights as having been detained before 24 March; others appear to have been detained after 24 March. By late July, ICRC had visited 2,095 detainees whose names appeared on a list provided by the Government of Serbia, as well as 200 not on the list but previously seen by the ICRC and 100 not on the list and not previously seen or known about. Groups representing the detainees contend that there are many more persons who were last seen in the custody of Serbian police than are named on the list. Some family members who have travelled to visit detainees reported being denied access because the case involving their relative was in the investigative stage. Others who have visited relatives expressed concern about conditions in Sremska Mitrovica and Pozarevac. Groups representing detainees have called for their release or, at a minimum, their transfer to UNMIK custody in Kosovo.

120. The lack of attention to prisoners and detainees within the text of the undertaking may well have fuelled the further taking of prisoners and the continued existence of detention centres maintained and controlled by the KLA and Kosovo Albanian paramilitaries. In conversation with the Special Rapporteur, the commander of the KLA denied the continued existence of detention centres. KFOR, however, has located several within Kosovo, including at least two - in Prizren and Gnjilane - described as containing instruments of torture. The Special Rapporteur notes that KFOR has not aggressively prosecuted KLA commanders in regions where it has located detention centres. Not only has it failed to locate and arrest KLA "police" and "military police" associated with detentions and abductions, but there are reliable reports that KFOR officers have relied and continue to rely on information provided by KLA on persons whom KFOR should itself arrest. American units in KFOR candidly informed the Special Rapporteur that, in the first days of its mission, it detained persons who, despite their showing obvious signs of mistreatment, were delivered as "war criminals" to KFOR by KLA "police". Asked by family members to enquire into the whereabouts of a Montenegrin police officer reported as abducted during the war in the Italian sector, the Special Rapporteur was told by a KFOR official in Pec that "there are no police who are not guilty of crimes". The Special Rapporteur suggests that such reasoning not only subverts the rule of law and the

fundamental principle of presumption of innocence, but erodes the authority of KFOR and civilian police.

121. At the time of writing, with few people in the field, UNMIK is engaged in a struggle to establish effective control over local governance, while the KLA inserts itself into the vacuum. NGOs and other international actors dealing with KLA "local authorities" legitimize their unsanctioned seizure of power. In the interim, the KLA, which has moved into government and commercial buildings not occupied by the United Nations and KFOR, has begun levying taxes and collecting revenues.

E. Concluding observations

122. During the war, the Special Rapporteur met with representatives of independent media, human rights activists and independent intellectuals from all over the Federal Republic of Yugoslavia. On those occasions, he was told that NATO by bombing the Federal Republic of Yugoslavia had betrayed and decimated the civil society that had looked outside the country for inspiration. In the first few weeks after the bombing ended, there was hope inside and outside Kosovo that the international community would, if it could not immediately impose civil society on Kosovo, at least enforce respect for the human rights and humanitarian values which it claimed had justified the war. Some believed that perhaps Kosovo, under KFOR/UNMIK administration, could be a different model of domestic politics. When judging why UNMIK has been unable so far to establish a civil administration, or why KFOR has been unable to guarantee security, the Special Rapporteur asks why the international actors who made the war and crafted the military agreement have yet to make the peace. He notes that, at this writing, there have been no initiatives for a political settlement. The elaborate formulations of the various plans proposed by United States Ambassador Christopher Hill in an attempt to achieve a political settlement and of the Rambouillet agreement for executive, legislative and judicial structures within Kosovo now serve no purpose among any of the parties that once sat at the negotiating table. The international community has asked the United Nations to administer despite the absence of a political agreement and KFOR to ensure security despite the absence of an agreed-upon peace. Once again the civilians of Kosovo, and of all the Federal Republic of Yugoslavia, are paying the price in violence and uncertainty. With no purchasing power, high unemployment, damaged infrastructure, rising prices and food shortages, civil society anticipates a cold and difficult winter.

F. Recommendations

123. In addition to continuing its investigations into gross violations of human rights and humanitarian law committed during the pre-war and war time periods, the ICTY should investigate violations that have occurred in Kosovo after the signing of the Kumanovo agreement and the undertaking with the KLA in June 1999.

124. Under the leadership of United Nations agencies, the international community should launch winterization programmes for the whole of the Federal

Republic of Yugoslavia, which is threatened with another humanitarian catastrophe.

125. Under the leadership of United Nations agencies, studies should continue of the long-term consequences for public health of damage done by NATO bombing of industrial centres. Similarly, a public health and ecological assessment should be made of the effects of the use of depleted uranium, particularly in Kosovo. The Government of the Federal Republic of Yugoslavia should ensure that workers already engaged in repair and reconstruction activities have adequate protection from toxic materials on site.

126. The Government of the Federal Republic of Yugoslavia should provide the ICRC and the Office of the United Nations High Commissioner for Human Rights with the names, whereabouts and status of charges against persons arrested in Kosovo and transferred to detention centres or prisons in the Federal Republic of Yugoslavia. Persons held in detention outside Kosovo should be guaranteed access to defense counsel of their choice, as well as visits by family and physicians as specified by international standards.

127. UNMIK and the Government of the Federal Republic of Yugoslavia should initiate discussions with a view to returning persons held in detention outside Kosovo back to Kosovo and to UNMIK.

128. The KLA should release information and dossiers on all persons detained starting in March 1998 through to the present. It should release persons still being held to UNMIK and shut down all of its arrest and detention operations.

129. UNMIK should establish a full, permanent court system in Kosovo, including appeals, juvenile, civil and misdemeanour courts, which ensures the right to a fair trial.

130. UNMIK and KFOR should take all necessary steps adequately to protect the rights of all citizens in Kosovo against violence, threats, intimidation and other unlawful acts by members of the same or other ethnic groups.

131. Particular attention should be paid to the social rights of the weaker sectors of society, such as the elderly, the handicapped and children. Any reports of trafficking of women or children should be promptly and thoroughly investigated.

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SITUATION OF HUMAN RIGHTS IN BOSNIA AND HERZEGOVINA, THE REPUBLIC OF CROATIA AND THE FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA AND MONTENEGRO)

Note by the Secretary-General

Addendum

The present addendum updates as of 2 November 1999 the information contained in the report submitted by Mr. Jiri Dienstbier, Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Croatia and Bosnia and Herzegovina (A/54/396-S/1999/1000), in accordance with General Assembly resolution 53/163 of 9 December 1998 and Economic and Social Council decision 1999/232 of 27 July 1999. Pursuant to the requests of the Commission on Human Rights and the Council, the report will also be made available to the members of the Security Council and the Organization for Security and Cooperation in Europe.

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I. BOSNIA AND HERZEGOVINA

1. Violence targeting returnees and property remains an obstacle to return in many areas of the country. Personal security is still an issue particularly in Bosnian Croat-controlled municipalities in the western part of the country and in some parts of the Republika Srpska (RS). Local police have failed to prevent attacks and the perpetrators of crimes have neither been arrested nor prosecuted. A common feature of these municipalities is that the local police are almost entirely composed of persons belonging to the local majority ethnic group.

2. Returns to urban areas are best facilitated through repossession of property by returning pre-war owners, which requires strict implementation of property laws. This still does not occur in most of the Federation, while in the Republika Srpska it has not even started. In Banja Luka (RS), local authorities have made little effort to facilitate minority returns; for example, in 1999 there were only some 30 evictions of temporary tenants and reinstatements of previous owners. The vast majority of returns take place discreetly to the residences of relatives and friends.

3. The situation is exacerbated by poor economic prospects for returnees. Lack of employment opportunities, widespread discrimination in all areas, particularly in employment, lack of social assistance (e.g. pension rights, health services), as well as an educational system which is dominated by nationalist views are some of the problems faced by returnees to varying degrees in all areas.

4. Under strong pressure from the international community, both entities have made considerable progress on reform of laws affecting return in conformity with Annex 7 of the Dayton Agreement, but they have performed very poorly on implementation. Despite some important local breakthroughs, a lack of will by local authorities throughout the country to accept minority returns to pre-war homes, including both private and socially owned properties, is widely apparent. While registration of property claims is now largely complete in the Federation and is progressing in the Republika Srpska, progress on rendering decisions on those claims is exceedingly slow, and implementation of decisions, including evictions of current occupants of property, barely occurs at all outside of Sarajevo canton. There is a clear lack of will on the part of the authorities to tackle multiple occupancy and other forms of misallocation of housing stocks. Political intervention in the legal process in property cases has been observed throughout the country.

5. The only significant progress in restoration of property rights and return is achieved through constant pressure and supervision from international organizations and in many places, particularly in Herzegovina in the west and in parts of the Republika Srpska, international pressure is openly resisted. There is little sign of the development of a self-sustaining return process. In the Republika Srpska, the authorities have established a claim process for repossession of property by refugees and displaced persons, but the structures have not been established in all municipalities and in those where they have, they still do not operate effectively. Lack of trained staff and acute shortages of material and financial resources are other problems plaguing the

process at the municipal level. The High Representative has taken one remedial measure by extending the deadline for returnees to register to reclaim socially owned property by six months, to 19 December 1999.

6. The success of minority returns within Bosnia and Herzegovina also depends on the political will of Croatia to respect and implement Annex 7 of the Dayton Agreement. Although the Government of Croatia through various agreements has undertaken to facilitate the return of refugees to Croatia, there are still 30,000-35,000 Croatian Serb refugees in the Republika Srpska. The return of those Croatian Serbs to Croatia would undoubtedly foster minority returns to the Republika Srpska (indeed many Croatian Serbs in the RS are currently occupying houses belonging to Bosniaks and Bosnian Croats). In spite of the adoption of a return programme in June 1998, however, Croatia has failed to allow major returns of refugees to take place, primarily as a result of persistent obstructions by implementing return bodies and continuing discriminatory laws. More specifically, the assessment of the complex return process shows that ethnic Serb refugees can return to Croatia but only rarely can they repossess their properties.

Conclusion

7. There is a near-total absence of rule of law in the area of property rights in Bosnia and Herzegovina, leading to very few returns taking place. There is, furthermore, insufficient progress on eliminating discriminatory practices in relation to social and economic rights. It is of no use to repeat forever the same concrete recommendations. We can limit ourselves to the statement that the Dayton Agreement and individual decisions affecting property must be fully implemented if basic human rights are to be respected. It is alarming that four years after Dayton its mandate has still not been effectively utilized.

II. REPUBLIC OF CROATIA

8. The Special Rapporteur is concerned by the statement of the President of Croatia that Bosnia and Herzegovina should be split into three separate entities. He recalls that the President is one of the signatories to the Dayton Agreement, and wishes to stress that any attempt at undermining the agreement can only worsen ethnic tensions in Bosnia and Herzegovina and may result in further violations of human rights and possible humanitarian catastrophes.

9. Parliamentary elections in Croatia are now set for 22 December 1999. The ruling party has agreed in principle to a proposal by the opposition that a parliamentary commission be set up to oversee the pre-election campaign coverage by the electronic media. However, the ruling party disagrees with the opposition regarding the authority of the proposed parliamentary commission to issue warnings and suspend television editors who violate the rules.

10. The Croatian Parliament elected eight new judges of the Constitutional Court. Six of the judges were nominated by the ruling party and two by the "Opposition Six". The new judges were not elected individually on the basis of their capabilities, but as part of a "package". This prompted most of the

"Opposition Six" to stage a walkout before the vote, claiming that the procedure envisaged for the election had not been respected.

11. With the upcoming elections in Croatia, some 29 women's non-governmental organizations have united to form the Women's Ad Hoc Coalition focusing on monitoring and influencing the course of the elections from the perspective of women's participation in the country's public and political life. The Women's Ad Hoc Coalition proposed an amendment to the draft Election Law calling for 40 per cent representation of women on candidate lists, and also establishing that male and female candidates be listed alternately in the first eight positions on the lists.

12. The expected pre-election dissolution of Parliament may mean that the Government will not – regardless of the deadline set in the Government's Return Programme – comply with its obligation to amend three major pieces of discriminatory legislation, namely, the Law on the Status of Expelled Persons and Refugees, the Law on Reconstruction, and the Law on Areas of Special State Concern. The retention of laws which discriminate against Croatian citizens on the basis of ethnicity indicates that the equal rights of all Croatian citizens are not respected in the country. This is also an important factor inhibiting the return of Serb refugees to Croatia. Ethnic Serb returnees continue to lack effective legal remedies for the restitution of occupied property.

13. A civil court judge has finally been appointed in Donji Lapac, north of Knin. It may be hoped that the Government will take similar measures in nearby Korenica, where citizens have been denied – almost continuously since 1991 – any legal remedy for matters such as property restitution as well as administrative issues including inheritance.

14. The security situation in the Danube region is reportedly stable. However, tensions still remain in some villages around Vukovar and the number of security incidents in Sotin continues to be high. At a meeting in Sotin on 30 September – attended, among others, by the chairperson of the National Trust Establishment Commission and Serb leaders from the region – it was constructively proposed that an ethnically mixed working group of Serb and Croat residents of the village should be set up to maintain dialogue, resolve differences and facilitate the search for missing persons.

15. The Special Rapporteur considers that due process was respected in the decision of the County Court of Zagreb which, on 4 October, convicted Second World War concentration camp commander Dinko Sakic for crimes against humanity and sentenced him to the longest possible term of 20 years in prison. With regard to Mladen Naletilic ("Tuta"), the Special Rapporteur commends the 21 October ruling of the Constitutional Court that he stand trial at the International Criminal Tribunal for the Former Yugoslavia (ICTY) in The Hague.

16. The Special Rapporteur's attention has been drawn to the retrial of Mirko Graorac, an ethnic Serb, in the Split County Court. The Court found Mr. Graorac guilty of committing war crimes against war prisoners and the civilian population in Manjaca, a prison camp in Bosnia and Herzegovina. Both international and local observers and lawyers noted deficiencies in the application of international fair-trial standards, for instance that there was

evidence apparently obtained through torture, and a general lack of evidence of the alleged crimes. The Supreme Court returned the case to the Split County Court for retrial, but only with respect to the fact that some witnesses had testified that they had been soldiers in active service with the Croatian army at the time they were taken prisoner in Bosnia and Herzegovina in early 1992. The Supreme Court stated that the acceptance by the court of those facts could have "far-reaching consequences for Croatia", presumably because it incriminated Croatia in the war in its neighbouring country. The defendant's lawyer, despite specific requests, was neither informed nor present when the Supreme Court considered the appeal, although his presence was required by law.

17. A hunger strike of 19 prisoners of Serb ethnicity in Osijek county prison began on 18 October, initiated by the group of 12 prisoners indicted or convicted on war crimes charges who were joined by a group of prisoners charged with common crimes in some cases related to the war. The prisoners' main concerns, according to information obtained by the Office of the High Commissioner for Human Rights (OHCHR), is that their trials have not met basic standards of fairness. One of the inmates, Ivica Vuletic, has spent 7 1/2 years in detention. Two indictees from the so-called Dalj Group, Vaso Gavrilovic and Dragoljub Savic, arrested in January 1999 and visited by the Special Rapporteur one month later, are still awaiting their first main hearing. As noted in the Special Rapporteur's main report, OHCHR monitored the trial of the Sodolovci group and found, as did other international and local observers, that the trial did not meet standards of fairness.

18. The Special Rapporteur wishes to commend the ongoing discussions between the OHCHR office in Croatia and relevant government ministries on further steps in the implementation of the OHCHR technical cooperation project. The National Committee for Human Rights Education has completed a draft National Programme for Education on Human Rights and is planning to distribute it to relevant groups. In addition, the Ministry of Education is preparing a project for a human rights manual for teachers, which is to be used for teachers' training. The Ministries of Defence, the Interior, and Foreign Affairs are in the process of completing their proposals for the technical cooperation programme.

Conclusions

19. The Special Rapporteur expresses his concern with respect to the legality of the election of judges to the Croatian Constitutional Court as a "package" of eight and not individually, as is the usual practice.

20. Croatia's attempt to defer Mr. Naletilic's transfer to the ICTY appears to reinforce the perception that the country demonstrates much less enthusiasm in cooperating with investigations where the alleged perpetrators are Croats and the victims non-Croats.

21. Croatian Serbs who wish to return should be enabled to do so and the authorities in Croatia should establish conditions that would make their return possible. All returnees should have access to an effective legal remedy for the restitution of their property. The guarantee of equal rights to all citizens, whatever their ethnic affiliation, is a key measure upon which Croatia's progress in fulfilling its international commitments will be judged.

22. The Government should unequivocally demonstrate full support for all aspects of the Dayton Agreement.

23. Finally, fair access to the media and full respect for freedom of press will be especially important in the current pre-election period. Harassment of independent media should be stopped, including the use of charges that articles cause "emotional anguish" to public figures. Free media are among the main prerequisites for democratic elections. The fairness of the election's results will be evaluated, among other factors, by the equality of access of all competing parties to the media, in particular television.

III. FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA AND MONTENEGRO)

24. Since early September, when he submitted the text of his current report to the General Assembly for translation and distribution, the Special Rapporteur conducted an additional mission to the Federal Republic of Yugoslavia (FRY) from 1 to 9 October 1999. During that mission – his sixth since March 1998 – the Special Rapporteur travelled to Belgrade, Nis, Kraljevo, Novi Pazar, Rozaje, Kosovska Mitrovica, Gnjilane, and Pristina. OHCHR staff accompanied the mission, which devoted particular attention to the situation of internally displaced persons (IDPs), detainees, individuals belonging to national minorities and the exercise of the freedoms of expression and association.

25. The Special Rapporteur arrived in Belgrade on 1 October, immediately following two nights in which police brutally beat demonstrators from the "Alliance for Change" and journalists covering the protests. He visited a demonstrator – herself an activist for refugee-IDP rights – before her surgery for injuries sustained when, after she saw police beating and kicking a demonstrator lying in the street, another police officer attacked and chased her, repeatedly beating her face and head with a truncheon. She observed that while some police officers simply waved demonstrators along to disperse them, other officers acted with targeted and unchecked brutality. Demonstrations continued in Belgrade and other cities in Serbia during the Special Rapporteur's mission. From 1 October through mid-October, however, the daily protests proceeded peacefully.

26. Although it has slipped from international headlines, the Kosovo crisis has not ended. As of the end of October, roughly 250,000 persons had been displaced since mid-June 1999 from Kosovo, a region that has rapidly lost most of its non-Albanian population. In Nis and in Kraljevo the Special Rapporteur met with the newly displaced: Serbs, Roma, Muslim Slavs (Bosniaks) and persons of "mixed" ethnicity, a category that consistently suffers in all the countries of the Special Rapporteur's mandate. The newly displaced also include Kosovo Albanians fearful of charges of "collaboration": in this regard, a recent decision of the parallel "government" controlled by the Kosovo Liberation Army (KLA) calls for expropriation of properties of "war criminals" and "collaborators". While significant differences exist as to the number of non-Albanians remaining in Kosovo, international officials have noted that incidents of violence directed at non-Albanians in Kosovo have decreased from July/August levels because there are few persons left to target. The Special Rapporteur notes here with sadness the street murder of a United Nations

official, a Bulgarian national, who was killed because he was reportedly "mistaken for a Serb".

27. The Special Rapporteur also notes with concern the increasingly violent discourse in Kosovo Albanian public life and the threatening charges of "betrayal" and "collaboration", such as those made in early October against Veton Surroi and Baton Haxhiu. For their criticism of the atrocities, these two leading democratic representatives of Kosovo Albanians were accused by "official" Kosovo Albanian media of treason and "pro-Slav sensitivity". The commentary further stated that neither of these "ordinary mobsters would go unpunished". As Koha Ditore later noted, this commentary by the Kosovo Interim Government news agency would enter the history of Kosovar journalism as the first commentary calling for murder.

28. Since July, the international presence in Kosovo has grown, as has the staff of the United Nations Mission in Kosovo (UNMIK) and its police forces. Yet the United Nations mission is still understaffed and still struggles to raise funds from the international community. UNMIK institutions of civil administration have not supplanted parallel institutions, controlled by the KLA, that were created, funded by remittances from the diaspora, and had begun levying heavy local taxes as early as July. Regional courts have begun to prosecute some common criminal cases and, in two districts, have initiated domestic war crimes proceedings. Different courts have applied different law with various interpretations, depending on the court district or presiding judge. Independent observers, including Kosovo Albanian attorneys, have raised concerns regarding judicial independence from political pressure.

29. Investigators for ICTY have concentrated their effort both on events before mid-June 1999 and on gross violations of human rights that occurred after the arrival of the international security force in Kosovo (KFOR). At this writing, however, the Tribunal had announced no indictments since its May indictment of the President of the FRY and several others.

30. Since July, with efforts by ICTY, the Organization for Security and Cooperation in Europe (OSCE) one of the four "pillars" of UNMIK, international and domestic human rights organizations, OHCHR and the Special Rapporteur, more information has emerged about tragic developments on the ground in Kosovo during the period March-June 1999. New collective and individual graves continue to be discovered daily, but many victims remain unidentified. The International Committee of the Red Cross (ICRC), OSCE and others, including the International Commission on Missing Persons (or "Dole Commission"), have been working to address the concerns of families of persons reported missing, but at this writing UNMIK had still not determined a uniform death registry procedure, including the establishment of coroners' offices in Kosovo. The sensitive issue of missing persons strains relations between all communities within Kosovo, as it has throughout all of the FRY, Bosnia and Herzegovina and the Republic of Croatia since 1991.

31. Efforts to address the situation of several thousand persons detained in Kosovo moved forward with the creation by UNMIK in late September 1999 of the Commission on Prisoners and Detainees, chaired by the OHCHR office in FRY.

Commission members, who come from cities throughout Kosovo, include attorneys, advocates, and family members of persons deprived of liberty.

32. Concerning individual cases, nothing new has been established regarding the fate and whereabouts of Ukqim Hoti. In response to inquiries, FRY authorities produced for Hoti's family and attorney a court order authorizing his release one day before the scheduled expiration of his sentence. The two international Australian CARE workers convicted and sentenced on charges of espionage were released, with official reports noting the intervention of a delegation of the Serb diaspora from Australia. Branko Jelen, the Yugoslav citizen tried and sentenced with the two Australians, remains in prison. The Special Rapporteur, the High Commissioner for Human Rights, and many others have appealed for Mr. Jelen's release.

33. The Special Rapporteur's mission ended on a disturbing note. A family member and associates of opposition leader Vuk Draskovic lost their lives in a traffic accident involving Mr. Draskovic, his family and colleagues and a lone truck whose unidentified driver fled the scene of the accident and remains at large. The accident immediately affected political discourse in Belgrade in the same way that violent allegations against Mr. Surroi and Mr. Haxhiu had affected discourse in Kosovo one week earlier, raising tensions, promoting speculation about the violent elimination of political opposition, and introducing more fear into an already tense situation. Such an atmosphere – whether in Belgrade or Pristina – does not create a fertile environment for the protection of human rights, democratization, confidence-building, or the opening-up of societies.

Conclusions

34. The situation in Kosovo can be summarized as follows: the spring ethnic cleansing of Albanians accompanied by murders, torture, looting and burning of houses has been replaced by the fall ethnic cleansing of Serbs, Roma, Bosniaks and other non-Albanians accompanied by the same atrocities. "Death to Serbs!" is the most common wall inscription now. Our problem is that this is now happening in the presence of UNMIK, KFOR and OSCE.

35. The KLA leadership in Kosovo is creating faits accomplis without regard to UNMIK's legal authority and the values which were the proclaimed basis of both the operation by the North Atlantic Treaty Organization (NATO) and the United Nations mission. The KLA has created a de facto government, appoints mayors, directors of enterprises and other officials, pursues a policy of ethnic cleansing in jobs, and supports the confiscation of property of non-Albanians and even some Albanians.

36. In Kosovo, UNMIK should appoint to posts in the provisional multi-ethnic administration only persons who have demonstrated their democratic beliefs. No one who took up arms, not to mention those who committed war crimes, should be permitted to hold any public office. The elections for all levels of administration should be postponed until stability has been achieved, people have returned home to live next to one another without fear, and a pluralistic multi-ethnic political structure has been developed. The view of the United Nations Secretary-General that the United Nations should not repeat the mistakes

made in Bosnia and Herzegovina where hard-line ethnic leaders were voted into office, should be accepted.

37. Property rights of all citizens should immediately be respected and violators of laws who expel inhabitants from their apartments or houses, or who murder, torture, rob and harass other citizens, or who burn, loot and otherwise damage the property of the others, or force people to leave their businesses so that they may confiscate them for themselves, should be arrested and punished according to the law. In the meantime, they should not be permitted by UNMIK or KFOR to keep under any pretext any property which they occupied by force or without any proper legal decision.

38. Arms in the territory of Kosovo should be progressively and comprehensively registered and confiscated. The borders with Albania and the former Yugoslav Republic of Macedonia should be controlled in order to prevent free access to Kosovo by criminals, drug traffickers and other undesirable elements from Europe and elsewhere who have been actively engaged in looting, robbery and killings of Serbs, Roma, Bosniaks, Croats and other non-Albanians.

39. The Governments of the States Members of the United Nations should send immediately to Kosovo all the necessary personnel that they promised.

40. Concerning the Federal Republic of Yugoslavia, to prevent a humanitarian catastrophe in the coming winter and to support the democratic forces, all sanctions and embargoes (except for the arms embargo) should be terminated and humanitarian aid should be promptly delivered, especially heating oil and medical supplies.